

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

— — — — — X
EDWARD CARTER, FRANK FIORILO,)
KEVIN LAMM, JOSEPH NOFI, and)
THOMAS SNYDER,)

Plaintiffs,)

-against-

) Index No.
) CV 07 1215

INCORPORATED VILLAGE OF OCEAN)
BEACH; MAYOR JOSEPH C.)
LOEFFLER, JR., individually)
and in his Official capacity;)
former mayor NATALIE K. ROGERS,)
individually and in her)
official capacity, OCEAN BEACH)
POLICE DEPARTMENT; ACTING)
DEPUTY POLICE CHIEF GEORGE B.)
HESSE, individually and in his)
official capacity; SUFFOLK)
COUNTY; SUFFOLK COUNTY POLICE)
DEPARTMENT OF CIVIL SERVICE;)
and ALLISON SANCHEZ,)
individually and in her)
official capacity,)

Defendants.)

— — — — — X
DEPOSITION OF CYNTHIA DISTEFANO
Hauppauge, New York
June 5, 2009

Reported by:
Judi Johnson, RPR, CRR, CLR
Job No.: 22935

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100 Veterans Memorial Highway
Hauppauge, New York

June 5, 2009
10:00 A.M.

Deposition of CYNTHIA DISTEFANO, held
at the offices of SUFFOLK COUNTY ATTORNEY'S
OFFICE, 100 Veterans Memorial Highway,
Hauppauge, New York, pursuant to Notice,
before Judi Johnson, a Registered
Professional Reporter, a Certified Realtime
Reporter, a Certified LiveNote Reporter and
Notary Public of the State of New York.

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CYNTHIA DISTEFANO
APPEARANCES:
THOMPSON WIGDOR & GILLY, LLP
Attorneys for the Plaintiffs
85 Fifth Avenue
New York, New York 10003

BY: ARIEL GRAFF, ESQ.

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530 Saw Mill Road
Elmsford, New York 10523

BY: KEVIN W. CONNOLLY, ESQ.

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926 RexCorp Plaza
Uniondale, New York 11556-0926

BY: KENNETH A. NOVIKOFF, ESQ.

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CYNTHIA DISTEFANO
APPEARANCES CONTINUED:
BEE READY FISHBEIN HATTER & DONOVAN, LLP
Attorneys for SUFFOLK COUNTY
170 Old Country Road
Mineola, New York 11501
BY: (NOT PRESENT)

SUFFOLK COUNTY DEPARTMENT OF LAW
Attorneys for the County
100 Veterans Memorial Highway
Hauppauge, New York 11788

BY: ARLENE ZWILLING, ESQ.

ALSO PRESENT:
FRANK FIORILLO
TOM SNYDER - AM SESSION ONLY
CHERYL TYAS - THOMPSON SUMMER INTERN

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CYNTHIA DISTEFANO
IT IS HEREBY STIPULATED AND AGREED by
and between the attorneys for the respective
parties herein, that filing and sealing and
the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, shall be reserved to the
time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be sworn to
and signed before any officer authorized to
administer an oath, with the same force and
effect as if signed and sworn to before the
Court.

- o0o -

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1 CYNTHIA DISTEFANO
2 CYNTHIA DISTEFANO,
3 Called as a witness herein, having
4 first been duly sworn, was examined and
5 testified as follows:
6 BY THE REPORTER:
7 **Q Please state your name and address for**
8 **the record.**
9 A Cynthia M. DiStefano, 725 Veterans
10 Memorial Highway, Hauppauge, New York 11788.
11 EXAMINATION 9:59:44AM
12 BY MR. GRAFF: 9:59:44AM
13 **Q Just for the record, the pronouncement 9:59:55AM**
14 **of your name, can you state that?**
15 A DiStefano. 10:00:01AM
16 **Q Good morning, Ms. DiStefano. My name 10:00:02AM**
17 **is Arie Graff. I'm an attorney representing the**
18 **plaintiffs in this lawsuit in which you are**
19 **being deposed today.**
20 **Do you understand that testifying in a 10:00:10AM**
21 **deposition is like testifying before a judge and**
22 **jury?**
23 MR. NOVIKOFF: Is it, really? Come 10:00:15AM
24 on.
25 MS. ZWILLING: She is testifying, but 10:00:19AM
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1 CYNTHIA DISTEFANO
2 understand a question, please tell me and I can
3 repeat it or rephrase it.
4 **If you need to take a break, just let 10:01:15AM**
5 **me know and we can do that. But I would ask**
6 **that if there's a question pending that hasn't**
7 **been answered, that you first answer the**
8 **question, and then we can take a break.**
9 **And, of course, if you ever need to 10:01:26AM**
10 **consult with your counsel about whether a**
11 **response would cover anything, attorney-client**
12 **privilege or of that nature, you're always free**
13 **to do that as well.**
14 **Have you ever given testimony under 10:01:39AM**
15 **oath in any context before?**
16 A Yes. 10:01:42AM
17 **Q And what was the most recent time that 10:01:43AM**
18 **you have given testimony under oath?**
19 MS. ZWILLING: Arie, can you limit 10:01:49AM
20 questions about prior testimony to testimony
21 given in the course of her employment?
22 MR. NOVIKOFF: Yes, I would join in 10:01:54AM
23 that.
24 MR. GRAFF: Yes. 10:01:56AM
25
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1 CYNTHIA DISTEFANO
2 I don't think that we will stipulate it's
3 the same thing.
4 BY MR. GRAFF: 10:00:25AM
5 **Q Do you understand that you're 10:00:25AM**
6 **testifying under oath today?**
7 A I do. 10:00:27AM
8 **Q Have you testified before in a 10:00:30AM**
9 **deposition?**
10 A Not in a deposition, no. 10:00:35AM
11 MR. NOVIKOFF: Arie, are we doing 10:00:38AM
12 regular stip?
13 MR. GRAFF: Yes, under the Federal 10:00:41AM
14 Rules of Civil Procedure.
15 BY MR. GRAFF: 10:00:48AM
16 **Q So I'll be asking you questions today. 10:00:48AM**
17 **The answers are going to be recorded by the**
18 **court reporter. With that in mind, please make**
19 **sure to let me finish asking the question; and**
20 **by the same token, I'll be sure to let you**
21 **finish answering so we don't speak over each**
22 **other.**
23 A Okay. 10:01:05AM
24 **Q So we can have a clear transcript. 10:01:06AM**
25 **If at any point you don't hear or 10:01:09AM**
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 10:01:56AM
3 **Q Have you given testimony under oath 10:01:57AM**
4 **specifically in the context of your employment**
5 **with the county?**
6 A Yes. 10:02:02AM
7 **Q And have you done that on more than 10:02:02AM**
8 **one occasion?**
9 A I've done it once. I'm not sure 10:02:05AM
10 whether other times were under oath.
11 **Q What was the one time that you are 10:02:09AM**
12 **sure was under oath?**
13 A In federal court. 10:02:12AM
14 **Q And when did that take place? 10:02:16AM**
15 A Several years ago. 10:02:17AM
16 **Q And do you remember what the 10:02:19AM**
17 **allegations were in the lawsuit in which you**
18 **testified?**
19 A It was a question about a police 10:02:26AM
20 probation issue.
21 **Q And are you referring to a police 10:02:35AM**
22 **probationary period?**
23 A Yes. 10:02:39AM
24 **Q And in what jurisdiction was that an 10:02:39AM**
25 **issue?**
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1 CYNTHIA DISTEFANO
2 A You know, I don't remember. 10:02:44AM
3 Q Do you remember why you testified in 10:02:47AM
4 that case, what your connection was to it?
5 MR. NOVIKOFF: Objection to form. 10:02:56AM
6 MS. ZWILLING: Arie, I also have an 10:02:56AM
7 objection to form. She may not know. I
8 mean, it's a legitimate area of inquiry what
9 she testified about or who called her, but
10 to ask her why she was asked to testify.
11 BY MR. GRAFF: 10:03:06AM
12 Q What was the general subject matter of 10:03:06AM
13 your testimony?
14 A The Civil Service rules regarding the 10:03:09AM
15 probationary period for a police officer.
16 Q And was Civil Service a party in that 10:03:15AM
17 case, if you know?
18 A No. 10:03:20AM
19 Q Do you remember who the plaintiff was 10:03:21AM
20 in that case?
21 A No. 10:03:23AM
22 Q Do you remember who the defendants 10:03:26AM
23 were?
24 A No. 10:03:31AM
25 Q What position did you hold at that 10:03:32AM
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1 CYNTHIA DISTEFANO
2 time?
3 A I think I was a principal personnel 10:03:36AM
4 analyst.
5 Q Do you recall what attorney 10:03:45AM
6 represented the county at that deposition?
7 MS. ZWILLING: Objection. There's 10:03:49AM
8 been no testimony that the county was a
9 party.
10 BY MR. GRAFF: 10:03:52AM
11 Q Were you represented by an attorney at 10:03:53AM
12 that deposition?
13 A Represented? 10:04:00AM
14 Q Was there an attorney representing the 10:04:02AM
15 county who was there?
16 A Yes. 10:04:05AM
17 Q And who was that attorney? 10:04:06AM
18 MR. NOVIKOFF: Relevancy escapes me. 10:04:11AM
19 A I can't remember for sure. 10:04:16AM
20 MR. NOVIKOFF: Was it a man or woman? 10:04:18AM
21 THE WITNESS: Woman. 10:04:20AM
22 MR. NOVIKOFF: Black hair, brown hair? 10:04:21AM
23 MR. GRAFF: My question was for 10:04:24AM
24 finding something searchable that I could
25 identify the case about. They don't post
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1 CYNTHIA DISTEFANO
2 gender or hair color on ETF.
3 MR. NOVIKOFF: Why don't you just 10:04:32AM
4 leave a space in the transcript and she'll
5 fill in the name of the case with the index
6 number.
7 MR. GRAFF: If you'd be able to do 10:04:37AM
8 that, we can leave a space in the transcript
9 here.
10 THE WITNESS: Okay. 10:04:42AM
11 MS. ZWILLING: We can't say for sure 10:04:43AM
12 we can ascertain what it is, but we'll
13 endeavor to do so.
14 (INSERT)_____ 10:04:48AM
15 _____ 10:04:49AM
16 BY MR. GRAFF: 10:04:49AM
17 Q Are you presently taking any 10:04:49AM
18 medication that could influence your ability to
19 testify truthfully and accurately today?
20 A No. 10:04:56AM
21 Q Are you sick at all today? 10:04:58AM
22 A No. 10:05:00AM
23 Q Is there anything that would impair 10:05:01AM
24 your ability to testify truthfully and
25 completely today?
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1 CYNTHIA DISTEFANO
2 A No. 10:05:07AM
3 Q What is your current position with 10:05:12AM
4 Suffolk County?
5 A I'm the director of classification 10:05:17AM
6 with the Suffolk County Civil Service
7 Department.
8 Q And how long have you held the 10:05:36AM
9 position of director of classification?
10 A Since October 2004. 10:05:40AM
11 Q And what position did you hold 10:05:46AM
12 immediately prior to becoming director of
13 classification?
14 A I should clarify. I was the chief of 10:05:51AM
15 classification in 2004, which was deemed
16 comparable to the director of classification in
17 2008. It's essentially the same position.
18 Q Okay. 10:06:05AM
19 A Prior to that, I was a principal 10:06:05AM
20 personnel analyst.
21 Q And when did you come chief of 10:06:08AM
22 classification?
23 A That was 2004. 10:06:11AM
24 Q And when did you become a principal 10:06:13AM
25 personnel analyst?
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1 CYNTHIA DISTEFANO
2 A I'm not sure. 10:06:19AM
3 Q Did you hold the position with the 10:06:20AM
4 county prior to being a principal personnel
5 analyst?
6 A Yes, I was a senior personnel analyst. 10:06:25AM
7 Q And for what period of time were you a 10:06:27AM
8 senior personnel analyst?
9 A I'm not sure of the exact date. 10:06:33AM
10 Q Did you hold a position prior to 10:06:38AM
11 senior personnel analyst?
12 A Personnel analyst. 10:06:42AM
13 Q And prior to personnel analyst? 10:06:48AM
14 A Personnel analyst trainee. 10:06:50AM
15 Q How long were you a personnel analyst 10:06:59AM
16 trainee, if you remember?
17 A March 1981. 10:07:05AM
18 Q And when did you change from being a 10:07:07AM
19 trainee to being a personnel analyst?
20 A In about 15 months, in 1982. 10:07:12AM
21 Q Were you employed prior to being a 10:07:21AM
22 personnel analyst trainee?
23 A Not by the county. 10:07:25AM
24 Q Where were you employed immediately 10:07:27AM
25 prior to that?
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1 CYNTHIA DISTEFANO
2 degree?
3 A 1974. 10:08:39AM
4 Q And the graduate credits, during what 10:08:43AM
5 period of time did you earn those?
6 A '74 to '76. 10:08:47AM
7 Q And from '76 until you became a 10:08:54AM
8 personnel analyst trainee, did you have any
9 other formal training, either in a university or
10 a certification program?
11 A No. 10:09:05AM
12 Q And was the position of personnel 10:09:12AM
13 analyst trainee, did that have a Civil Service
14 classification?
15 A That was the Civil Service 10:09:17AM
16 classification.
17 Q And were there minimum qualifications 10:09:19AM
18 to a obtain that position?
19 A Yes. 10:09:24AM
20 Q As a personnel analyst trainee, was 10:09:33AM
21 there any particular jurisdiction within Suffolk
22 County that was within your area of
23 responsibility?
24 A There were several, yes. 10:09:41AM
25 Q Do you recall what they were? 10:09:43AM
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1 CYNTHIA DISTEFANO
2 A The Dime Savings Bank. 10:07:30AM
3 Q And other than the positions that we 10:07:37AM
4 just went through, have you held any other
5 positions with a government or municipal entity?
6 A No. 10:07:45AM
7 Q I assume you graduated high school? 10:07:57AM
8 A Yes. 10:07:59AM
9 Q And what high school did you attend? 10:07:59AM
10 A Andrew Jackson High School in Cambria 10:08:02AM
11 Heights, Queens.
12 Q After graduating Andrew Jackson High 10:08:08AM
13 School, did you go on to pursue any higher
14 education?
15 A Not immediately. 10:08:14AM
16 Q At some point, did you? 10:08:15AM
17 A Yes. 10:08:16AM
18 Q And what form of higher education did 10:08:17AM
19 you pursue first?
20 A I have a bachelor's degree from CW 10:08:21AM
21 Post.
22 Q And have you had any other formal -- 10:08:28AM
23 A I have 12 graduate credits from 10:08:31AM
24 Hofstra.
25 Q When did you obtain the bachelor's 10:08:35AM
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1 CYNTHIA DISTEFANO
2 A The police department, the Town of 10:09:45AM
3 Brookhaven. Those are the two I'm sure about
4 when I started.
5 Q When you say the police department, 10:09:53AM
6 are you referring --
7 A Suffolk County Police Department. 10:09:58AM
8 Q And as a personnel analyst trainee, 10:10:02AM
9 what was the position title of the person that
10 you reported to?
11 A Senior personnel analyst. 10:10:12AM
12 Q And who was the senior personnel 10:10:20AM
13 analyst who you reported to when you first
14 started working as a trainee?
15 MR. NOVIKOFF: In 1981? Oh, Arie, 10:10:26AM
16 we're gonna be here all day. Come on --
17 never mind.
18 A Gino DiStefano. 10:10:34AM
19 Q And is Gino DiStefano any relation to 10:10:39AM
20 yourself?
21 A Now he is, yes. 10:10:43AM
22 Q Is he -- 10:10:46AM
23 A He's my husband. 10:10:48AM
24 Q The area of your jurisdiction or 10:10:53AM
25 responsibilities as personnel analyst trainee,
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CYNTHIA DISTEFANO

did that ever change from Brookhaven in Suffolk County to the time you were a trainee?

A Yes. 10:11:01AM

Q And what other areas were within your jurisdiction or responsibility as a trainee?

A They changed occasionally for all of the personnel analyst trainees amongst towns, school districts, county departments. I don't remember specifically.

MR. NOVIKOFF: Was this witness 10:11:22AM

noticed up as a fact witness or an expert witness? Because if she was noticed up as an expert witness, then I guess I could understand why you're going through her experiences and knowledge. If she was

noticed up as a fact witness, then I think this entire line of questioning is palpably irrelevant, and I'm putting it on the record as such.

MR. GRAFF: Okay. She was noticed as a 30(b)(6) designee. 10:11:45AM

MR. NOVIKOFF: Right. Which, in my understanding, under the federal rules means that she's the one that the county is

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CYNTHIA DISTEFANO

putting up to speak to the facts of this case as you've alleged them and whatever is relevant and material to the case. She's not here as an expert. And my understanding of a 30(b)(6) witness is that if she doesn't have personal knowledge of particular facts, it's incumbent upon her to find out the facts. What her duties and responsibilities and knowledge were back in -- almost 30 years ago, I believe goes more towards that of an expert witness than of a 30(b)(6) witness. And again, I'm putting on the record if this line of questioning continues, I will be seeking appropriate sanctions.

MR. GRAFF: You can do what you think is appropriate. 10:12:32AM

MS. ZWILLING: I just want to note for the record that I do agree with Mr. Novikoff. For purposes of expediency at this point, I am going to permit you a bit of latitude, but I'm hoping that we're not going to be here all day with things the witness did 35 years ago. 10:12:34AM

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CYNTHIA DISTEFANO

MR. GRAFF: No, we're not going to be spending the day on that. I'm just going through -- 10:12:50AM

MS. ZWILLING: Just move ahead, and if we move ahead in a prompt fashion, it will -- 10:12:53AM

MR. GRAFF: Great. 10:12:54AM
BY MR. GRAFF: 10:12:55AM

Q Did you have to apply for the position of personnel analyst from the position that you held as a personnel analyst trainee?

A No. The trainee had a one-year or two-year probationary period, and that was the training period. If you were successful, you became a personnel analyst without further examination. It was shortened from two years during my time as a trainee, so I did not serve the full two years as a trainee. 10:12:59AM

Q And did the jurisdiction or area of your responsibilities change when you became a personnel analyst from your previous position of being a personnel analyst trainee?

A No. 10:13:43AM

Q So the various departments and
TSG Reporting - Worldwide (877) 702-9580 10:13:45AM

CYNTHIA DISTEFANO

Brookhaven and Suffolk County PD that you referred to before, were those the same areas of jurisdiction, responsibility during your period as a personnel analyst?

A I'm not absolutely sure when things changed during the years. 10:13:57AM

Q And when you were a personnel analyst, what was the position level or title of the person that you reported to? 10:14:01AM

A Senior personnel analyst. 10:14:06AM

Q And either a personnel analyst or a personnel analyst trainee, did you ever have jurisdiction or responsibility over anything to do with Civil Service and the Incorporated Village of Ocean Beach?

A No. 10:14:31AM

Q And who was the senior personnel analyst or who were they, if more than one, that you reported to as a personnel analyst? 10:14:37AM

A That was still Gino DiStefano. 10:14:46AM

Q Was that the person you reported to for the entire period that you were a personnel analyst?

A Yes. 10:14:54AM

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1 CYNTHIA DISTEFANO
2 **Q And I may have asked this before, but 10:14:54AM**
3 **just to be clear. If you recall, for what**
4 **length of time in terms of years or months, as**
5 **best you can remember, were you either a**
6 **personnel analyst or a personnel analyst**
7 **trainee?**
8 A Trainee was about 15 months. I was 10:15:14AM
9 promoted to senior around 1984. I'm not
10 absolutely sure of that.
11 **Q And what were your duties as a 10:15:29AM**
12 **personnel analyst?**
13 A To oversee the public employment in 10:15:34AM
14 the jurisdictions to which I was assigned for
15 their conformance with Civil Service rules and
16 regulations.
17 **Q And are the duties of a personnel 10:15:52AM**
18 **analyst today different in any material respect**
19 **from the duties of a personnel analyst at the**
20 **time you held that position?**
21 A No. 10:16:01AM
22 **Q As a senior personnel analyst, what 10:16:13AM**
23 **were the -- what was the jurisdiction or**
24 **geographic area of your responsibility?**
25 A I don't remember precisely. 10:16:25AM
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1 CYNTHIA DISTEFANO
2 ask this witness in the year 2006, what the
3 training of a personnel analyst trainee
4 would be?
5 MR. GRAFF: Let me ask a different 10:18:03AM
6 question.
7 BY MR. GRAFF: 10:18:04AM
8 **Q During the period from 2000 to the 10:18:05AM**
9 **present, has the nature of the training provided**
10 **to personnel analyst trainees changed in any**
11 **material respects?**
12 A Just in one. 10:18:15AM
13 **Q Before telling me the one change, 10:18:19AM**
14 **describe the nature of that training up until**
15 **the time the change was made.**
16 A Normally the training is that we are 10:18:28AM
17 divided into units in the department. The units
18 are supervised by a principal personnel analyst.
19 There are subordinate senior personnel analysts
20 and then analysts and trainees. The trainee
21 works with a senior, with an experienced analyst
22 or with the principal and handling
23 jurisdictions, but not independently.
24 MR. NOVIKOFF: Just one question. On 10:18:58AM
25 your 30(B)(6) Notice, was this area of
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1 CYNTHIA DISTEFANO
2 **Q Did it ever include the Incorporated 10:16:27AM**
3 **Village of Ocean Beach?**
4 A No. 10:16:31AM
5 **Q Did it include any police departments? 10:16:31AM**
6 A I think I still had Suffolk County 10:16:42AM
7 Police Department, but I'm not absolutely sure.
8 **Q As a personnel analyst trainee -- as a 10:16:54AM**
9 **personnel analyst trainee, was there any**
10 **formalized instruction beyond on-the-job**
11 **training as to how to satisfy the duties of a**
12 **personnel analyst?**
13 MS. ZWILLING: Objection. 10:17:12AM
14 MR. NOVIKOFF: Objection to form. 10:17:13AM
15 MS. ZWILLING: My objection is beyond 10:17:14AM
16 that. I mean, we're talking about a period
17 decades before the events relative to this
18 case.
19 MR. GRAFF: Okay. Let me ask it in 10:17:23AM
20 relation to today or --
21 BY MR. GRAFF: 10:17:37AM
22 **Q In 2006, could you please describe the 10:17:37AM**
23 **nature of the training that a personnel analyst**
24 **trainee underwent, undergoes or underwent?**
25 MR. NOVIKOFF: In 2006 -- you want to 10:17:52AM
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1 CYNTHIA DISTEFANO
2 inquiry identified as an area you were going
3 to question her on?
4 MR. GRAFF: It was. 10:19:07AM
5 BY MR. GRAFF: 10:19:09AM
6 **Q And what was the change you were 10:19:10AM**
7 **referring to?**
8 A The change is that we used to have 10:19:13AM
9 state conferences that provided training. But
10 the present county executive has not allowed
11 travel, so we no longer can go to those.
12 **Q And when did that change come into 10:19:26AM**
13 **place?**
14 A When was Mr. Levy elected? I don't 10:19:29AM
15 remember.
16 **Q Was it within the last one to two 10:19:34AM**
17 **years?**
18 A Six years. I think he's in the second 10:19:39AM
19 year of his second term.
20 **Q And at what point in his term did the 10:19:43AM**
21 **change come into place?**
22 A Within the first year or two. 10:19:49AM
23 **Q And you had explained that the 10:20:00AM**
24 **position of being a personnel analyst trainee**
25 **when you held it ripened into being a personnel**
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1 CYNTHIA DISTEFANO
2 analyst without meeting subsequent examination;
3 is that correct?
4 A Yes. 10:20:11AM
5 Q Was that the case also from the period 10:20:12AM
6 from 2000 to present?
7 A Yes. After one year as a successful 10:20:16AM
8 trainee.
9 Q And how is it -- what are the factors 10:20:20AM
10 or what's the methodology for evaluating whether
11 someone has been a successful trainee in that
12 context?
13 A An ongoing day-to-day observation by 10:20:29AM
14 the senior and the principal analyst assigned to
15 that person.
16 Q And are there any written evaluations 10:20:38AM
17 other than what's observed?
18 A No. 10:20:43AM
19 Q And you explained that personnel 10:20:53AM
20 analyst trainees worked together with a more
21 senior person and that, I believe, there are
22 many different possible people that a trainee
23 could be paired with; is that correct?
24 A It's a senior or a principal. 10:21:05AM
25 Q And how many seniors were there during 10:21:07AM
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1 CYNTHIA DISTEFANO
2 director.
3 Q During the period, let's keep it 10:22:22AM
4 focused now on 2000 to the present, what
5 requirements or standards, if any, had to be
6 satisfied for a personnel analyst to become a
7 senior personnel analyst?
8 A There's a Civil Service examination, 10:22:38AM
9 and it's promotional, I believe, with two years
10 of permanent competitive status as a personnel
11 analyst.
12 Q How many personnel analysts were there 10:22:52AM
13 at any given point between 2000 and the present?
14 A Twelve, 14. I'm guessing. 10:23:01AM
15 Q And what is the substance of the 10:23:10AM
16 examination that is required to become a senior
17 personnel analyst?
18 MS. ZWILLING: At what time? 10:23:22AM
19 MR. GRAFF: 2000 to the present. 10:23:24AM
20 BY MR. GRAFF: 10:23:26AM
21 Q And please let me know if it changed 10:23:27AM
22 in that period.
23 A I'm not in the examinations division. 10:23:30AM
24 I've taken one examination. There are questions
25 on personnel issues, questions on Civil Service
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1 CYNTHIA DISTEFANO
2 the period 2000 to the present at any one time?
3 A From three to five. 10:21:17AM
4 Q And the other position that you had 10:21:26AM
5 mentioned that could be paired with the trainee
6 was?
7 A Principal personnel analyst. 10:21:30AM
8 Q And how many principal personnel 10:21:32AM
9 analysts were there at any --
10 A There were three. 10:21:36AM
11 Q And have there been three throughout 10:21:37AM
12 the period from 2000 through the present?
13 A Yes. 10:21:44AM
14 Q And who does the principal personnel 10:21:46AM
15 analyst report to, what position?
16 A The chief of classification, now the 10:21:51AM
17 director of classification.
18 Q And that's the position that you 10:21:57AM
19 currently hold?
20 A Yes. 10:21:59AM
21 Q And who do senior personnel analysts 10:22:00AM
22 report to?
23 A The principal personnel analyst. 10:22:04AM
24 Q And whom do you report to? 10:22:07AM
25 A Alan Schneider, the personnel 10:22:10AM
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1 CYNTHIA DISTEFANO
2 law, questions on interviewing.
3 Q And when you say questions on Civil 10:23:41AM
4 Service law, is that the New York State Civil
5 Service law?
6 A Yes. 10:23:48AM
7 Q And are there other bodies of law or 10:23:48AM
8 regulation that are also tested on that
9 examination?
10 A We have Civil Service rules. I'm not 10:23:59AM
11 sure whether there are questions specifically
12 related to those.
13 Q And what are the duties of a senior 10:24:06AM
14 personnel analyst?
15 A Senior personnel analysts are also 10:24:10AM
16 assigned jurisdictions, but they have
17 supervisory responsibilities over the personnel
18 analysts and the trainees assigned to them.
19 Q When you refer to jurisdictions, are 10:24:22AM
20 you referring to geographical units?
21 A Municipalities. 10:24:26AM
22 Q So it would be all the Civil Service 10:24:28AM
23 competitive class positions within a
24 municipalities?
25 A Specific municipalities and the 10:24:35AM
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1 CYNTHIA DISTEFANO
2 positions therein.
3 **Q As a senior personnel analyst, do you** 10:24:39AM
4 **recall what municipalities you had jurisdiction**
5 **over?**
6 A I don't know which were at specific 10:24:54AM
7 times. I can tell you that I had over the
8 years, but what title I was in when I had them,
9 I'm not going to be able to separate.
10 **Q So in terms of all of your positions** 10:25:06AM
11 **up until being director of classification, could**
12 **you identify those jurisdictions?**
13 A I had the Town of Babylon, the Town of 10:25:17AM
14 Brookhaven, Suffolk County PD, Department of
15 Finance and Taxation, Department of Audit and
16 Control, District Attorney's office, county
17 executive's office, legislature, the Civil
18 Service Department. Various school districts.
19 I know I had Southold. I had Middle Country. I
20 had Orient. I had Little Flower. I had the
21 Village of Northport for a while.
22 **Q Was the Village of Ocean Beach ever a** 10:26:03AM
23 **jurisdiction under your supervision?**
24 MR. NOVIKOFF: I didn't hear it. 10:26:09AM
25 A It was under my indirect supervision 10:26:11AM
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1 CYNTHIA DISTEFANO
2 **director of classification?**
3 A I oversee the classification division, 10:27:42AM
4 which has three principal personnel analysts and
5 four senior personnel analysts at the present
6 and the analysts underneath them. That's
7 divided into three sections. And I oversee the
8 certifications division, which establishes the
9 eligible lists and certifies the lists to the
10 employers. And I oversee the administrator 3,
11 who prepares the budget for our department.
12 **Q And as director of classification, do** 10:28:34AM
13 **you or anybody in your department actually**
14 **create regulations or draft the text of**
15 **regulations that are then promulgated?**
16 A I have worked on amendments to our 10:28:47AM
17 Civil Service rules, which then go to the state
18 for approval.
19 **Q I have some questions about the Civil** 10:29:03AM
20 **Service rules. First, just very basically, are**
21 **you able to explain what that body of rule or**
22 **regulation is?**
23 A Yes. 10:29:15AM
24 MR. NOVIKOFF: Objection to form. 10:29:15AM
25
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1 CYNTHIA DISTEFANO
2 because subordinates have responsibility for
3 that.
4 **Q What positions did you -- which of the** 10:26:21AM
5 **position that you held did you have subordinates**
6 **who had jurisdiction over Ocean Beach?**
7 A Definitely as the chief of 10:26:36AM
8 classification.
9 **Q What about as a senior --** 10:26:40AM
10 A I'm not sure as a principal. Not as a 10:26:42AM
11 senior.
12 **Q What standards of requirements had to** 10:26:55AM
13 **be satisfied -- I'm now switching back to 2000**
14 **to the present -- for a senior personnel analyst**
15 **to become a principal personnel analyst?**
16 A Again a Civil Service examination and 10:27:08AM
17 qualifying time as a senior personnel analyst.
18 **Q And what are the duties of a principal** 10:27:18AM
19 **personnel analyst? Again, it's the period 2000**
20 **to the present.**
21 A There's a larger scope of 10:27:26AM
22 responsibility. More people as subordinates,
23 because there are subordinate supervisors and
24 seniors.
25 **Q And what are your current duties as** 10:27:39AM
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 10:29:16AM
3 **Q Can you explain what Civil Service** 10:29:17AM
4 **rules are?**
5 MS. ZWILLING: Objection. 10:29:20AM
6 MR. NOVIKOFF: Objection to form. 10:29:20AM
7 MS. ZWILLING: She can answer. 10:29:21AM
8 A Civil Service rules are specific to 10:29:23AM
9 Suffolk County, and they set forth how we apply
10 the Civil Service law that the state has set.
11 So it's more detailed.
12 **Q And who -- is there a department or** 10:29:37AM
13 **division within the department that's**
14 **responsible for drafting those rules?**
15 MS. ZWILLING: Objection. 10:29:49AM
16 You can answer. 10:29:50AM
17 A No. We usually form a committee with 10:29:51AM
18 representatives from examinations and
19 classification, and we work on them together.
20 The personnel director, of course, reviews
21 everything before it goes to Albany.
22 **Q And who or what position initiates the** 10:30:07AM
23 **creation of a committee like that?**
24 A It becomes necessary when we see that 10:30:16AM
25 we need to make changes in those rules or we
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1 CYNTHIA DISTEFANO
2 need to explain something that's causing
3 confusion and we want to clarify.
4 **Q And who has the -- who's the decision 10:30:27AM**
5 **maker who says let's make a committee?**
6 A It's Alan Schneider. 10:30:35AM
7 **Q Have you ever been on such a 10:30:37AM**
8 **committee?**
9 A Yes. 10:30:39AM
10 **Q Have you ever -- could you identify 10:30:42AM**
11 **some, or as many as you can recall, of the rules**
12 **for which you were on a committee that made**
13 **amendments or modifications?**
14 MS. ZWILLING: During what period of 10:30:56AM
15 time?
16 BY MR. GRAFF: 10:30:57AM
17 **Q During any point during your 10:30:58AM**
18 **employment with the county?**
19 A The committee reviewed all of the 10:31:05AM
20 rules and just made attempts and revisions as we
21 went through and we thought things needed to be
22 addressed.
23 **Q Are the Civil Service rules for 10:31:13AM**
24 **Suffolk County published?**
25 A Yes. 10:31:20AM
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1 CYNTHIA DISTEFANO
2 city. You can stick your head in the door
3 and get a copy. Literally.
4 BY MR. GRAFF: 10:32:13AM
5 **Q Do they distribute copies at the 10:32:13AM**
6 **information window?**
7 A Upon request, yes. 10:32:17AM
8 **Q How long are the Civil Service rules, 10:32:18AM**
9 **in terms of pages, if you can estimate?**
10 A I think 20 some. 10:32:22AM
11 MS. ZWILLING: As a matter of fact, if 10:32:28AM
12 you want them, I know I have copies of
13 rules. I just don't know if I have the
14 latest ones. If you want to check before
15 you leave.
16 MR. GRAFF: That would be great. 10:32:38AM
17 Maybe at the lunch break.
18 MS. ZWILLING: Okay. 10:32:43AM
19 MR. GRAFF: I ask the court reporter 10:33:13AM
20 to mark as CD 1.
21 (Whereupon, 30(b)(6) Notice was marked 10:33:30AM
22 as DiStefano Exhibit 1 for identification,
23 as of this date.)
24 BY MR. GRAFF: 10:34:09AM
25 **Q Ms. DiStefano, if you could just take 10:34:10AM**
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1 CYNTHIA DISTEFANO
2 **Q Are they made available to the public? 10:31:20AM**
3 A They are. We have them available at 10:31:22AM
4 our information desk. They have the force of
5 law.
6 **Q And what about outside of the county 10:31:27AM**
7 **offices, is it possible to obtain a copy**
8 **somewhere else, a member of the public, that is?**
9 A A member of the public can come and 10:31:36AM
10 get one from us.
11 **Q Can they go anywhere else? Are they 10:31:39AM**
12 **in a library or on the website?**
13 MS. ZWILLING: Objection. I don't 10:31:44AM
14 know if she's going to know if they're held
15 by the public libraries.
16 Do you know if they're on the website? 10:31:50AM
17 THE WITNESS: I don't know. I don't 10:31:52AM
18 believe they're on the website.
19 BY MR. GRAFF: 10:31:54AM
20 **Q Do you know any other way where a 10:31:55AM**
21 **member of the public could get access to a copy**
22 **of the rules other than coming to the**
23 **information desk?**
24 MS. ZWILLING: Arie, they're directly 10:32:03AM
25 across the street on your way back to the
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1 CYNTHIA DISTEFANO
2 **a moment to look that over and let me know if**
3 **you've seen the document before? (Handing.)**
4 A I'm not sure. 10:35:00AM
5 **Q If I could ask you to please turn your 10:35:00AM**
6 **attention to the second page towards the bottom,**
7 **Number 1.**
8 A (Witness complies.) 10:35:07AM
9 **Q If you could take a moment. I'm not 10:35:08AM**
10 **going to read it all into the record. If you**
11 **could read the text of Number 1 and let me know**
12 **when you've had a chance to do that.**
13 A Okay. I have read Number 1. 10:35:17AM
14 **Q Can you tell me if you're 10:35:42AM**
15 **knowledgeable and qualified to testify on the**
16 **county's behalf about the matters described in**
17 **Number 1?**
18 MS. ZWILLING: Objection. 10:35:50AM
19 MR. NOVIKOFF: Why don't you ask her 10:35:51AM
20 the questions, and then you can make the
21 determination whether she is qualified to
22 testify on behalf of the county.
23 MS. ZWILLING: I would ask that you 10:36:00AM
24 proceed in that fashion.
25
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<p style="text-align: right;">Page 38</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 10:36:05AM</p> <p>3 Q Rather than going through number by 10:36:05AM</p> <p>4 number, I would like to ask if you could just</p> <p>5 read through to Number 7 and let me know when</p> <p>6 you've read the text of the document.</p> <p>7 A (Witness complies.) 10:36:16AM</p> <p>8 MS. ZWILLING: Just to move things 10:36:19AM</p> <p>9 along, Arie, most of these items, or</p> <p>10 essentially all of them, pertain to Civil</p> <p>11 Service documents which we previously</p> <p>12 provided to your office. You're certainly</p> <p>13 welcome to question the witness as to the</p> <p>14 meaning of those documents, which I assumed</p> <p>15 you were going to do anyway.</p> <p>16 MR. GRAFF: Yeah. 10:36:42AM</p> <p>17 MS. ZWILLING: Have her explain and 10:36:43AM</p> <p>18 interpret those to you. For obvious</p> <p>19 reasons, I can't let her comment on whether</p> <p>20 she's the best person to answer your</p> <p>21 question.</p> <p>22 MR. NOVIKOFF: I think she is. 10:36:55AM</p> <p>23 MR. GRAFF: I won't ask her those 10:36:58AM</p> <p>24 questions.</p> <p>25 A I have read it. 10:37:29AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 39</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 Q And without going through each of the 10:37:30AM</p> <p>3 items, is there anything in the list that you</p> <p>4 read that you know you are not knowledgeable</p> <p>5 about or wouldn't be able to speak to?</p> <p>6 MS. ZWILLING: Objection. 10:37:44AM</p> <p>7 You can answer. 10:37:44AM</p> <p>8 A I wouldn't know the minimal 10:37:48AM</p> <p>9 qualifications for dock master without looking</p> <p>10 in our specifications.</p> <p>11 MS. ZWILLING: Arie, if I can just 10:37:55AM</p> <p>12 help things along, with respect to the</p> <p>13 minimum qualifications, I don't know that</p> <p>14 there's anyone on the face of the earth that</p> <p>15 could recite all those qualifications for</p> <p>16 all of those positions by heart. But you</p> <p>17 have been given the written qualification</p> <p>18 sheets. So you're obviously free to</p> <p>19 question her.</p> <p>20 MR. GRAFF: I'll question her. Just 10:38:11AM</p> <p>21 to be clear, it's not for certain that</p> <p>22 everything that I have covers all of this,</p> <p>23 if there's anything else.</p> <p>24 MS. ZWILLING: I understand. If Ms. 10:38:20AM</p> <p>25 DiStefano can't recite them by heart, we're,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 40</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 quite frankly, not going to be able to</p> <p>3 provide you with someone who can recite them</p> <p>4 by heart. But certainly we have given you</p> <p>5 the document listing those qualifications,</p> <p>6 with which she is familiar and can explain</p> <p>7 those to you.</p> <p>8 A There is no such title as police 10:38:33AM</p> <p>9 dispatcher.</p> <p>10 Q Has there ever been such a title 10:38:40AM</p> <p>11 during your employment?</p> <p>12 MS. ZWILLING: Objection. 10:38:42AM</p> <p>13 MR. NOVIKOFF: In the 100-year history 10:38:44AM</p> <p>14 of the Suffolk County Civil Service?</p> <p>15 MR. GRAFF: I just said during her 10:38:47AM</p> <p>16 employment. Maybe if you weren't reading</p> <p>17 the newspaper.</p> <p>18 MR. NOVIKOFF: Trust me, I'm listening 10:38:52AM</p> <p>19 to all your questions, Arie. About two have</p> <p>20 been relevant so far.</p> <p>21 MS. ZWILLING: My objection is 10:38:57AM</p> <p>22 something else, and I'm just going to</p> <p>23 request a clarification. Are you asking if</p> <p>24 there has been a police dispatcher in any</p> <p>25 jurisdiction or are you talking about</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 41</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 specific jurisdictions? Because different</p> <p>3 PDs within the geographical confines of the</p> <p>4 county may have different positions. You</p> <p>5 can ask a general question, if you want, but</p> <p>6 that's not clear to me.</p> <p>7 MR. GRAFF: I did intend to ask a 10:39:19AM</p> <p>8 general question.</p> <p>9 BY MR. GRAFF: 10:39:22AM</p> <p>10 Q During any part of your employment at 10:39:22AM</p> <p>11 Suffolk County, are you aware of any</p> <p>12 jurisdictions or any direction from the</p> <p>13 Department of Civil Service with respect to a</p> <p>14 position of police dispatcher?</p> <p>15 MR. NOVIKOFF: Better form as to time 10:39:37AM</p> <p>16 frame, but still objectionable.</p> <p>17 MS. ZWILLING: You can answer. 10:39:40AM</p> <p>18 A There is no Civil Service title of 10:39:41AM</p> <p>19 police dispatcher.</p> <p>20 Q And does Civil Service -- is there any 10:39:47AM</p> <p>21 classified or Civil Service classified</p> <p>22 position -- withdrawn.</p> <p>23 Do any municipalities within Suffolk 10:40:00AM</p> <p>24 County have the position of police dispatcher?</p> <p>25 MR. NOVIKOFF: Objection. Form. 10:40:07AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 42</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: How would she know 10:40:08AM</p> <p>3 that? You can ask what Civil Service has</p> <p>4 classified for them.</p> <p>5 MR. NOVIKOFF: Exactly. 10:40:13AM</p> <p>6 MS. ZWILLING: She can't speak to what 10:40:14AM</p> <p>7 the internal titles are in the police</p> <p>8 departments. There's a distinction.</p> <p>9 MR. GRAFF: Okay. 10:40:20AM</p> <p>10 BY MR. GRAFF: 10:40:20AM</p> <p>11 Q Does Civil Service classify for any 10:40:21AM</p> <p>12 specific jurisdictions a position within an</p> <p>13 individual jurisdiction of police dispatcher?</p> <p>14 A We use a title public safety 10:40:30AM</p> <p>15 dispatcher.</p> <p>16 MS. ZWILLING: Just to move things 10:40:34AM</p> <p>17 along, Arie. They have the public safety</p> <p>18 title. Different PDs may internally choose</p> <p>19 to call them various other titles, but</p> <p>20 that's not a Civil Service title. That's</p> <p>21 not information Civil Service is going to</p> <p>22 have. That's internal to the PD.</p> <p>23 MR. GRAFF: If I could ask the court 10:40:51AM</p> <p>24 reporter to mark as CD 2 a one-page document</p> <p>25 produced by the county without Bates number,</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 43</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 headed "Police Officer."</p> <p>3 (Whereupon, A document headed Police 10:41:01AM</p> <p>4 Officer was marked as DiStefano Exhibit 2</p> <p>5 for identification, as of this date.)</p> <p>6 BY MR. GRAFF: 10:41:27AM</p> <p>7 Q If you could just please look at the 10:41:27AM</p> <p>8 document and let me know if it's a document</p> <p>9 you've seen before. (Handing.)</p> <p>10 A Yes, it is. 10:41:33AM</p> <p>11 Q If you look at the bottom left, it 10:41:34AM</p> <p>12 looks like it's a revision or dated 4-26-02.</p> <p>13 A (Nodding.) 10:41:42AM</p> <p>14 Q Has this document been revised 10:41:43AM</p> <p>15 subsequent to that date?</p> <p>16 A I would have to check. 10:41:46AM</p> <p>17 Q And would you know if -- when the last 10:41:48AM</p> <p>18 revision prior to 2002 was?</p> <p>19 A Not without looking. 10:41:54AM</p> <p>20 MS. ZWILLING: I believe we produced 10:41:56AM</p> <p>21 more than one version of this.</p> <p>22 MR. GRAFF: That may be true. 10:42:01AM</p> <p>23 BY MR. GRAFF: 10:42:09AM</p> <p>24 Q The last subheading, "Necessary 10:42:09AM</p> <p>25 Special Requirements" --</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 44</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 A Uh-huh. 10:42:13AM</p> <p>3 Q -- does that have any particular 10:42:13AM</p> <p>4 meaning in the context of Civil Service</p> <p>5 documents?</p> <p>6 A Yes. 10:42:18AM</p> <p>7 Q What does it that mean? 10:42:19AM</p> <p>8 A That applicants must comply with these 10:42:20AM</p> <p>9 things.</p> <p>10 Q And "minimum qualifications," does 10:42:24AM</p> <p>11 that also have a particular meaning in this</p> <p>12 context?</p> <p>13 A Yes. That is what allows the person 10:42:29AM</p> <p>14 to participate in the examination.</p> <p>15 Q When you say "must comply" -- 10:42:35AM</p> <p>16 withdrawn.</p> <p>17 Roughly in the middle of the section, 10:42:41AM</p> <p>18 under Necessary Special Requirements, it states</p> <p>19 that there will be qualifying medical,</p> <p>20 psychological, physical fitness and polygraph</p> <p>21 evaluations.</p> <p>22 A Yes. 10:42:53AM</p> <p>23 Q Are there other documents that define 10:42:54AM</p> <p>24 what those -- Civil Service documents from</p> <p>25 Suffolk County that define what those</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 45</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 evaluations are?</p> <p>3 MS. ZWILLING: Could I just have that 10:43:02AM</p> <p>4 question read back?</p> <p>5 (Whereupon, the referred to portion 10:43:05AM</p> <p>6 was read back by the court reporter: Are</p> <p>7 there other documents that define what those</p> <p>8 -- Civil Service documents from Suffolk</p> <p>9 County that define what those evaluations</p> <p>10 are?)</p> <p>11 MS. ZWILLING: Is your question 10:43:16AM</p> <p>12 whether Civil Service has additional</p> <p>13 documents defining that or whether there are</p> <p>14 some in some existence?</p> <p>15 MR. GRAFF: I meant to ask Civil 10:43:23AM</p> <p>16 Service.</p> <p>17 A Yes. We have specific agility 10:43:26AM</p> <p>18 requirements and more details that's published</p> <p>19 when we announce the examination.</p> <p>20 Q And is that published as part of the 10:43:40AM</p> <p>21 examination announcement or is it a separate</p> <p>22 document?</p> <p>23 A It's attached to the examination 10:43:44AM</p> <p>24 announcement.</p> <p>25 Q And who devises the elements of each 10:43:48AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 **CYNTHIA DISTEFANO**
2 **of these evaluations?**
3 MS. ZWILLING: You're asking who 10:44:00AM
4 devises the test?
5 MR. GRAFF: Yeah. Who puts together 10:44:02AM
6 what a physical fitness test is in this
7 context.
8 A The state has established standards 10:44:09AM
9 statewide for police officer, and we adhere to
10 those.
11 **Q So all of these evaluations are 10:44:18AM**
12 **defined by the state --**
13 A No, you didn't ask about all. You 10:44:22AM
14 asked about one.
15 **Q Let's go through one by one. The 10:44:25AM**
16 **qualifying medical?**
17 A That is a state standard. 10:44:28AM
18 **Q What about the qualifying 10:44:30AM**
19 **psychological?**
20 A That's county. 10:44:33AM
21 **Q What about physical fitness? 10:44:37AM**
22 A That's a state standard. 10:44:39AM
23 **Q And the polygraph evaluation? 10:44:41AM**
24 A That's county. 10:44:44AM
25 **Q And what individual or position title 10:44:49AM**
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1 **CYNTHIA DISTEFANO**
2 Department asked for that as a necessary special
3 requirement.
4 **Q And when did they make that request? 10:45:53AM**
5 A I'm not sure. They used to do it, and 10:46:03AM
6 they wanted it specifically noted on the
7 specification at some point, so we did that.
8 They did that as part of their background
9 investigation.
10 **Q And was it made a necessary special 10:46:16AM**
11 **requirement within the last 10 years?**
12 A I think so. 10:46:21AM
13 **Q And who in the county was responsible 10:46:22AM**
14 **for the decision to make it a necessary special**
15 **requirement?**
16 A Alan Schneider in the Civil Service 10:46:34AM
17 Department in response to the police
18 department's is request.
19 **Q And did the police department explain 10:46:40AM**
20 **why it was making that request?**
21 A Because they'd been doing it anyway as 10:46:50AM
22 part of their background investigation, and they
23 just wanted it set forth on the specification.
24 **Q And do you have any information as to 10:46:59AM**
25 **why they were doing it in the first place?**
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1 **CYNTHIA DISTEFANO**
2 **in the county devises the polygraph evaluation**
3 **that's applicable in this context?**
4 MS. ZWILLING: Objection. I'm not 10:44:59AM
5 certain whether you're asking who determines
6 that there should be such a requirement or
7 who devises the actual test.
8 MR. NOVIKOFF: Also for the record, 10:45:10AM
9 any other time any other counsel objects to
10 the question, the village joins in in the
11 objection, even if not stated.
12 MR. CONNOLLY: So does counsel for 10:45:22AM
13 Mr. Hesse.
14 MR. GRAFF: I don't mean the 10:45:27AM
15 individual questions that are asked of a
16 polygraph examinee, but the general
17 requirements for structuring a polygraph
18 exam, who implements that and comes up with
19 that in this context.
20 MS. ZWILLING: I'm still not sure I 10:45:38AM
21 understand the question. Are you asking who
22 makes the decision there should be a
23 polygraph test?
24 MR. GRAFF: Yes. 10:45:44AM
25 A The police, Suffolk County Police 10:45:45AM
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1 **CYNTHIA DISTEFANO**
2 MS. ZWILLING: Why the police 10:47:04AM
3 department did that?
4 MR. GRAFF: It might have been 10:47:06AM
5 communicated in the context of asking for it
6 to be a special necessary qualification.
7 MS. ZWILLING: If they told her about 10:47:13AM
8 it, she can speak to that.
9 A I don't know. 10:47:15AM
10 **Q And the psychological examination, 10:47:20AM**
11 **who's responsible -- first of all, other than**
12 **the examination announcement, is there any other**
13 **written document created by Suffolk County that**
14 **provides further detail on what the**
15 **psychological evaluation involves?**
16 A I'm not aware of any. 10:47:41AM
17 **Q And who administers the psychological 10:47:45AM**
18 **evaluations?**
19 A We contract that. 10:47:48AM
20 **Q And are there any directions or 10:47:50AM**
21 **standards or guidelines that are provided to the**
22 **contractors who conduct those evaluations with**
23 **respect to what they should be doing?**
24 MS. ZWILLING: Objection. 10:48:05AM
25 Arie, I just have to ask what the 10:48:05AM
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<p style="text-align: right;">Page 50</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 relevance of this is, because as I</p> <p>3 understand it, there's no suggestion that</p> <p>4 your clients were somehow not meeting these</p> <p>5 qualifications.</p> <p>6 MR. NOVIKOFF: Isn't the issue, 10:48:18AM</p> <p>7 Arie -- and I don't think it's an issue,</p> <p>8 because I think we've had eight different</p> <p>9 witnesses testify. I think we all</p> <p>10 stipulated that at a certain point in time</p> <p>11 there were a number of officers at Ocean</p> <p>12 Beach that were not certified and then at a</p> <p>13 certain point in time, some of them became</p> <p>14 certified and some of them didn't.</p> <p>15 MS. ZWILLING: If you have any doubts 10:48:40AM</p> <p>16 about that, pose those questions to her.</p> <p>17 Let's narrow this down so we don't go all</p> <p>18 over the place. I think she's perfectly</p> <p>19 capable to speak to those larger issues.</p> <p>20 MR. GRAFF: I'd like to get an answer 10:48:52AM</p> <p>21 to the question that I posed.</p> <p>22 MS. ZWILLING: Well, why a bunch of 10:48:55AM</p> <p>23 civil servants would tell psychologists how</p> <p>24 to run a psychological exam --</p> <p>25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 51</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 BY MR. GRAFF: 10:49:02AM</p> <p>3 Q Is there something that explains 10:49:03AM</p> <p>4 generally what the objectives of the exam are</p> <p>5 and why -- how the exam should be conducted to</p> <p>6 meet the interests of the county?</p> <p>7 MS. ZWILLING: The exam is done by 10:49:12AM</p> <p>8 psychologists. It's a psychological exam.</p> <p>9 It's not a Civil Service exam.</p> <p>10 MR. NOVIKOFF: Why couldn't all of 10:49:19AM</p> <p>11 this be done by document request, asking for</p> <p>12 those documents. To the extent there's any</p> <p>13 document that explains or articulates the</p> <p>14 rationale behind any particular test that's</p> <p>15 in the possession of the county, they will</p> <p>16 produce it. I'm sure the county would</p> <p>17 produce that. Respectfully, instead of</p> <p>18 spending an hour and a half asking this</p> <p>19 witness questions that she would only be</p> <p>20 testifying to based upon a document, make</p> <p>21 that request.</p> <p>22 MR. GRAFF: That would be great. If 10:49:43AM</p> <p>23 there are documents that have not been</p> <p>24 produced that exist that define that,</p> <p>25 then --</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 52</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MS. ZWILLING: Conceivably anything 10:49:49AM</p> <p>3 and everything hasn't been produced. What I</p> <p>4 will say with respect to the psychological,</p> <p>5 if the county has documents relating to the</p> <p>6 psychologicals that have not been produced</p> <p>7 and we legally can produce them, we will.</p> <p>8 And I say legally because there may be state</p> <p>9 law restrictions on us turning over Civil</p> <p>10 Service examination materials without some</p> <p>11 sort of confidentiality agreement. Or if</p> <p>12 they're state materials, we may not be</p> <p>13 permitted to turn them over at all.</p> <p>14 MR. GRAFF: Okay. 10:50:21AM</p> <p>15 MS. ZWILLING: Short of that, 10:50:22AM</p> <p>16 certainly we would produce them.</p> <p>17 MR. GRAFF: Two small things. I don't 10:50:25AM</p> <p>18 think I'm disagreeing on that. In the event</p> <p>19 that you determine that you cannot legally</p> <p>20 produce them, I would ask that you obviously</p> <p>21 let us know that they exist.</p> <p>22 MS. ZWILLING: I would. And you are 10:50:36AM</p> <p>23 free to get them from the state at that</p> <p>24 point, because some of these things are</p> <p>25 state documents. If there is something that</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 53</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 is not a state document, we may be able to</p> <p>3 turn it over pursuant to a confidentiality</p> <p>4 order.</p> <p>5 MR. GRAFF: There's actually a 10:50:48AM</p> <p>6 confidentiality order in place.</p> <p>7 MS. ZWILLING: I know. My concern 10:50:51AM</p> <p>8 here is to the extent that the state</p> <p>9 sometimes creates documents related to Civil</p> <p>10 Service or imposes restrictions upon us as</p> <p>11 to what we can do with them, even though all</p> <p>12 parties may agree to keep things</p> <p>13 confidential, the state may not be</p> <p>14 comfortable with that.</p> <p>15 MR. GRAFF: I understand. If that's 10:51:09AM</p> <p>16 the case, if you can say there are documents</p> <p>17 but pursuant to state requirements we're not</p> <p>18 producing them, so we can address that.</p> <p>19 MS. ZWILLING: I don't know that there 10:51:17AM</p> <p>20 are documents. Certainly, the state issue</p> <p>21 permeates all Civil Service document</p> <p>22 questions.</p> <p>23 MR. NOVIKOFF: Have you made a request 10:51:24AM</p> <p>24 from the state? I mean, I think that would</p> <p>25 be something you would want to do.</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 54</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 MR. GRAFF: Strategies for dealing 10:51:28AM</p> <p>3 with the state is better addressed off the</p> <p>4 record.</p> <p>5 MR. NOVIKOFF: Like you indicated to 10:51:35AM</p> <p>6 me in an E-mail a week ago, we're two years</p> <p>7 into the litigation, and I would've thought</p> <p>8 that by now any information you would've</p> <p>9 needed to get from the state you could have</p> <p>10 gotten. Again, you know, listen, I'll stay</p> <p>11 here as long as we have to, but it just</p> <p>12 seems that you're asking this witness to</p> <p>13 opine on information that is contained</p> <p>14 within a document --</p> <p>15 MR. GRAFF: We're about to move on 10:51:51AM</p> <p>16 from that. We hit on a constructive way --</p> <p>17 MS. ZWILLING: Generally speaking, 10:51:56AM</p> <p>18 professional examinations are conducted by</p> <p>19 professionals. Civil Service doesn't tell</p> <p>20 the doctor how to do a physical. We don't</p> <p>21 tell psychologists how to conduct a</p> <p>22 psychological exam. That's why we hire</p> <p>23 professionals.</p> <p>24 MR. GRAFF: Okay. The same thing 10:52:09AM</p> <p>25 we've been discussing with respect to</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 55</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 psychological, if I could ask with respect</p> <p>3 to the other qualifying exams in this line,</p> <p>4 medical, physical fitness, polygraph, to the</p> <p>5 extent, subject to --</p> <p>6 MS. ZWILLING: Well, the physical 10:52:19AM</p> <p>7 examination is not a written exam. It's a</p> <p>8 medical physical. Like if you go to a</p> <p>9 doctor and have an annual physical, you</p> <p>10 know, it's akin to that. These are not</p> <p>11 written examinations.</p> <p>12 MR. GRAFF: Okay. 10:52:29AM</p> <p>13 MR. NOVIKOFF: And your next question 10:52:31AM</p> <p>14 to this witness will be what is the basis</p> <p>15 for giving a physical exam, and this witness</p> <p>16 again will either be able to testify based</p> <p>17 upon something she has read or she's going</p> <p>18 to say I don't know, but there's probably a</p> <p>19 document out there that explains it.</p> <p>20 MR. GRAFF: Subject to everything you 10:52:47AM</p> <p>21 said, that's all --</p> <p>22 MS. ZWILLING: If there are documents 10:52:49AM</p> <p>23 and we can disclose them pursuant to the</p> <p>24 considerations I've already mentioned, we</p> <p>25 can give you them. But I just want to make</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 56</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 clear that these are not necessarily written</p> <p>3 exams and they're expert exams done by</p> <p>4 professionals in that discipline. They're</p> <p>5 not written Civil Service tests.</p> <p>6 MR. GRAFF: Okay. I do understand 10:53:07AM</p> <p>7 that. I appreciate the explanation.</p> <p>8 BY MR. GRAFF: 10:53:13AM</p> <p>9 Q One more question on this line before 10:53:14AM</p> <p>10 we can move on from it.</p> <p>11 What is the basis for conducting a 10:53:16AM</p> <p>12 polygraph evaluation in this context?</p> <p>13 MR. NOVIKOFF: Objection to form. I 10:53:22AM</p> <p>14 don't know what that question means.</p> <p>15 MS. ZWILLING: Whose basis? 10:53:24AM</p> <p>16 BY MR. GRAFF: 10:53:26AM</p> <p>17 Q What is the purpose of conducting a 10:53:26AM</p> <p>18 polygraph evaluation in this context?</p> <p>19 MR. NOVIKOFF: Objection to form. 10:53:32AM</p> <p>20 MS. ZWILLING: Objection. It's not 10:53:33AM</p> <p>21 her requirement. I don't understand the</p> <p>22 question. It was not her decision to</p> <p>23 request a polygraph exam.</p> <p>24 MR. GRAFF: Right. But she's 10:53:42AM</p> <p>25 appearing as the county's designee on</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 57</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 qualifications. If she knows what the</p> <p>3 purpose of a qualification is, I'm certainly</p> <p>4 entitled to ask.</p> <p>5 MR. NOVIKOFF: She'll know what the 10:53:50AM</p> <p>6 qualifications are, but to ask this witness</p> <p>7 the purpose of the qualification, you're</p> <p>8 asking this witness to get into the mind of</p> <p>9 either the legislative body or the executive</p> <p>10 body that at one point in time, perhaps a</p> <p>11 century ago, have set forth these</p> <p>12 requirements.</p> <p>13 MS. ZWILLING: Or the police 10:54:07AM</p> <p>14 department. And I can assure you Civil</p> <p>15 Service does not read the mind of the police</p> <p>16 department. If it's been communicated to</p> <p>17 her, she can relate that to her. But I</p> <p>18 don't think she can explain why the police</p> <p>19 department made this request if she was not</p> <p>20 told that.</p> <p>21 MR. GRAFF: All I want to know things 10:54:23AM</p> <p>22 she can answer.</p> <p>23 MR. NOVIKOFF: You have to ask the 10:54:27AM</p> <p>24 right question, Arie.</p> <p>25 MS. ZWILLING: If you want to ask her 10:54:29AM</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 CYNTHIA DISTEFANO
2 if any of that was communicated to her,
3 that's certainly proper.
4 MR. GRAFF: I want to ask both 10:54:37AM
5 questions.
6 BY MR. GRAFF: 10:54:39AM
7 **Q Do you know what the purpose of the 10:54:39AM**
8 **polygraph evaluation is in this context?**
9 MS. ZWILLING: Objection. 10:54:44AM
10 MR. NOVIKOFF: Objection. 10:54:45AM
11 MS. ZWILLING: If she can answer, she 10:54:=
47AM
12 can answer.
13 A I have an opinion. I don't have any 10:54:49AM
14 specific --
15 MS. ZWILLING: She's not going to give 10:54:52AM
16 you her opinion.
17 BY MR. GRAFF: 10:54:54AM
18 **Q Was it ever communicated to you? 10:54:55AM**
19 A No, it was not. 10:54:57AM
20 **Q Is the basis for the opinion your 10:54:58AM**
21 **personal belief or is it based on knowledge or**
22 **experience with Civil Service?**
23 MS. ZWILLING: Objection. It's her 10:55:05AM
24 personal opinion. Her personal opinion,
25 whether she thinks it's a good idea, bad
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1 CYNTHIA DISTEFANO
2 A The MPTC? I've read that. 10:55:56AM
3 **Q You're abbreviating Municipal Training 10:56:04AM**
4 **Police Council?**
5 A Yes. 10:56:08AM
6 **Q What is a police officer training 10:56:20AM**
7 **course recognized by the state municipal**
8 **training council? What is that referring to?**
9 A The police academy training. 10:56:26AM
10 **Q And is that a police academy 10:56:29AM**
11 **training -- in the context of this document, is**
12 **that police academy training offered in any**
13 **particular part of the state?**
14 A It's offered in the Suffolk County 10:56:39AM
15 Police Academy.
16 **Q Could you identify what this document 10:56:45AM**
17 **is?**
18 A It is a job specification for a 10:56:48AM
19 full-time police officer.
20 **Q Is that a full-time police officer 10:56:53AM**
21 **within a jurisdiction in Suffolk County**
22 **specifically?**
23 A Within any jurisdiction in Suffolk 10:56:58AM
24 County.
25 **Q So for purposes of these 10:57:03AM**
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1 CYNTHIA DISTEFANO
2 idea, poor idea, wonderful idea is
3 irrelevant.
4 MR. NOVIKOFF: Palpably. 10:55:16AM
5 MS. ZWILLING: Especially since she 10:55:19AM
6 didn't make the decision.
7 MR. GRAFF: Can she answer the 10:55:22AM
8 question?
9 MS. ZWILLING: No. I'm going to ask 10:55:24AM
10 you to move on.
11 MR. GRAFF: So just to be clear. I'm 10:55:25AM
12 not trying to be argumentative. Are you
13 telling the witness not to answer the
14 question?
15 MS. ZWILLING: I'm asking you to move 10:55:31AM
16 on at this time. I'm not saying you will
17 not get an answer to the question at some
18 point. I'm asking you to move on, and we
19 can pick it up again later.
20 MR. GRAFF: If we could mark it then 10:55:40AM
21 so we can find that.
22 BY MR. GRAFF: 10:55:43AM
23 **Q The last full sentence on that page, 10:55:43AM**
24 **if you could just read it and let me know when**
25 **you've read that sentence.**
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1 CYNTHIA DISTEFANO
2 **qualifications, is a police officer training**
3 **course recognized by the state but one outside**
4 **of Suffolk County, does that satisfy this**
5 **requirement?**
6 MR. NOVIKOFF: Objection to form. 10:57:16AM
7 MS. ZWILLING: Arie, it's a state 10:57:19AM
8 requirement. It's not Civil Service's
9 requirement. New York does not allow people
10 to have status of peace officer until they
11 complete a state-approved academy.
12 MR. GRAFF: I understand. But for the 10:57:33AM
13 jurisdiction of Suffolk County, does that
14 state approved police academy need to be in
15 Suffolk County or can it be a police academy
16 in another county in the state.
17 A It can be anywhere. This is for -- 10:57:44AM
18 Suffolk County police officers go to this one.
19 MR. NOVIKOFF: Again, I don't want to 10:57:50AM
20 be sounding like a broken record, but I want
21 to mark for the record again that you're
22 asking a lot of questions that are palpably
23 irrelevant. We have two issues, as far as I
24 see, regarding to Suffolk County Civil
25 Service. One, the certification issue,
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1 CYNTHIA DISTEFANO
2 which you have talked about at length with
3 numerous witnesses, which I think for the
4 most part many of the facts are undisputed.
5 And two, the allegation that somebody at the
6 Suffolk County Civil Service was engaged in
7 a conspiracy with someone over at Ocean
8 Beach concerning these five plaintiffs.
9 What we're doing for the last hour and 10:58:17AM
10 a half, I just think it's borderline
11 harassment, and it's palpably improper. I
12 can't instruct the witness not to answer.
13 I'm not going to stop the deposition. I'm
14 going to explain to Judge Boyle that on this
15 issue, virtually all of the facts are
16 uncontested and not disputed. I say it for
17 the record.
18 MR. GRAFF: Was there a question 10:58:45AM
19 pending?
20 MR. NOVIKOFF: Certainly regarding the 10:58:49AM
21 issue of certification.
22 MR. GRAFF: Was there a question 10:58:57AM
23 pending when Mr. Novikoff made his comment?
24 (Whereupon, the referred to portion 10:59:15AM
25 was read back by the court reporter: So for
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1 CYNTHIA DISTEFANO
2 **requirements in an individual police department,**
3 **as far as what the requirement of Suffolk County**
4 **Civil Service means, does a certificate from a**
5 **police officer training course recognized by the**
6 **state but not in Suffolk County satisfy this**
7 **requirement?**
8 MR. NOVIKOFF: Objection to form. I 11:00:26AM
9 don't even understand it.
10 A I don't really understand the 11:00:31AM
11 question.
12 MS. ZWILLING: Arie, I know the answer 11:00:35AM
13 to the question, and that's the reason why I
14 know you're not going to be able to get an
15 answer to the question. The state -- can we
16 go off the record.
17 (Whereupon, a discussion was held off 11:00:45AM
18 the record.)
19 BY MR. GRAFF: 11:02:20AM
20 **Q Ms. DiStefano, I know it's a state 11:02:31AM**
21 **requirement, the Municipal Police Training**
22 **Council. If you know, is there such a thing as**
23 **a part-time municipal police officer training**
24 **program versus a full-time?**
25 MR. NOVIKOFF: Objection to form. 11:02:48AM
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1 CYNTHIA DISTEFANO
2 purposes of these qualifications, is a
3 police officer training course recognized by
4 the state but one outside of Suffolk County,
5 does that satisfy this requirement?)
6 MS. ZWILLING: With respect to which 10:59:18AM
7 police department? You're asking a question
8 that I think assumes information that may
9 not necessarily be assumed. This may be
10 specs or qualifications applicable to all
11 police officers throughout the state, but
12 individual police departments may have their
13 own unique requirements.
14 MR. GRAFF: I don't want the question 10:59:43AM
15 to be unclear.
16 MS. ZWILLING: And she certainly can't 10:59:46AM
17 speak to what the police department in
18 Lackawanna, New York requires.
19 BY MR. GRAFF: 10:59:51AM
20 **Q Can a police department in Suffolk 10:59:52AM**
21 **County have requirements that are less stringent**
22 **than the requirements on this page?**
23 A No. 10:59:58AM
24 **Q And then going back to my last 11:00:02AM**
25 **question. Whether or not there are additional**
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1 CYNTHIA DISTEFANO
2 MS. ZWILLING: Are you asking about a 11:02:52AM
3 police academy program?
4 MR. GRAFF: Recognized by New York 11:02:56AM
5 State Municipal Training Council that would
6 satisfy this requirement, are there
7 subcategories, full-time or part-time, if
8 she knows.
9 A I'm not sure if it's the same length 11:03:08AM
10 of time. I think it's shorter, but I'm not
11 sure. They still need the municipal police
12 training certificate.
13 MR. GRAFF: I'll ask the court 11:03:30AM
14 reporter to please mark as CD 3 a two-page
15 document produced by the county without
16 Bates number, headed "Police officer
17 part-time/seasonal."
18 (Whereupon, police officer 11:03:41AM
19 part-time/seasonal was marked as DiStefano
20 Exhibit 3 for identification, as of this
21 date.)
22 BY MR. GRAFF: 11:04:10AM
23 **Q Ms. DiStefano, if you can just take a 11:04:11AM**
24 **moment to look over the document and let me know**
25 **if it's something you've seen before. (Handing.)**
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1 CYNTHIA DISTEFANO
2 A It is. 11:04:19AM
3 **Q And could you identify it, please? 11:04:19AM**
4 A It's the Civil Service job 11:04:21AM
5 specification for a part-time seasonal police
6 officer.
7 **Q And if you look under, again, the 11:04:27AM**
8 **heading "Necessary Special Requirements," this**
9 **time Number 3, it states, "Candidates must**
10 **posses a police officer training certificate**
11 **recognized by the New York State Municipal**
12 **Police Training Council.**
13 A Uh-huh. 11:04:43AM
14 **Q If you recall in the last exhibit it 11:04:44AM**
15 **said that after appointment, candidates will be**
16 **required to complete that program.**
17 A Uh-huh. 11:04:52AM
18 **Q Is that a distinction with substance 11:04:54AM**
19 **or is it just different drafting language?**
20 MR. NOVIKOFF: Objection. Form. 11:05:00AM
21 MS. ZWILLING: Objection. 11:05:00AM
22 BY MR. GRAFF: 11:05:01AM
23 **Q Is there a difference between those 11:05:01AM**
24 **two requirements?**
25 MR. NOVIKOFF: Well, you just stated 11:05:04AM
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1 CYNTHIA DISTEFANO
2 communicated to her or she has personal
3 knowledge, I think it's an appropriate
4 question. If you're asking her if she has
5 an opinion, it's inappropriate.
6 MR. GRAFF: I asked if she knows. 11:06:05AM
7 A A police officer full-time is hired 11:06:07AM
8 from the list. He goes to the academy. He
9 serves an 18-month probationary period. He
10 starts in the academy. He earns his municipal
11 police training certificate. He's not out on
12 the street functioning as a police officer.
13 He's a student in the police academy. A
14 part-time police officer is hired to go to work
15 immediately. So he needs that MPTC in order to
16 do that. Most times they go to whatever
17 training they need before they actually are
18 hired and hit the streets.
19 **Q And in this context, is there a 11:06:47AM**
20 **difference between appointment as it's used**
21 **after appointment versus being hired?**
22 MR. NOVIKOFF: Objection. In what 11:06:57AM
23 context?
24 MS. ZWILLING: Objection. 11:06:58AM
25
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1 CYNTHIA DISTEFANO
2 that there is. From the plain language of
3 the document, there seems to be a
4 difference.
5 MS. ZWILLING: The documents contain 11:05:12AM
6 different language.
7 **Q And then practice as applied by the 11:05:15AM**
8 **Department of Civil Service, are these applied**
9 **as written?**
10 MR. NOVIKOFF: Objection. Foundation. 11:05:21AM
11 MS. ZWILLING: You can answer. 11:05:28AM
12 A Of course they're applied as written. 11:05:30AM
13 That's why they're written.
14 **Q Do you know why for a part-time 11:05:34AM**
15 **seasonal the candidate must posses it, whereas**
16 **for a police officer, the candidate must**
17 **complete the program after completing the**
18 **program?**
19 MR. NOVIKOFF: Objection. 11:05:47AM
20 MS. ZWILLING: Objection. 11:05:47AM
21 Did the state ever tell you that? 11:05:48AM
22 MR. NOVIKOFF: Does she know based on 11:05:51AM
23 personal knowledge or does she have an
24 opinion? Or has the reason been
25 communicated to her? If it's been
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 11:07:00AM
3 **Q Is appointment the same as hiring? 11:07:01AM**
4 A Yes. 11:07:04AM
5 **Q So in the context of a police officer, 11:07:06AM**
6 **a police officer is hired and then after being**
7 **hired gets the -- goes into the training program**
8 **and then begins working after completing it?**
9 MS. ZWILLING: Objection. Which kind 11:07:16AM
10 of police officer?
11 MR. GRAFF: The full-time. 11:07:18AM
12 MR. NOVIKOFF: Then say it. 11:07:20AM
13 MS. ZWILLING: Arie, if it helps 11:07:22AM
14 things, when the SCPD hires officers that
15 have been working with the New York City
16 Police Department up until the day before,
17 they begin the academy and go through the
18 same training program as recruits off the
19 street who never did any law enforcement in
20 their life.
21 BY MR. GRAFF: 11:07:40AM
22 **Q And Ms. DiStefano, do you agree with 11:07:40AM**
23 **what Ms. Zwilling just explained?**
24 A Yes. 11:07:46AM
25 **Q During the period after employment, 11:07:47AM**
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CYNTHIA DISTEFANO

when the full-time police officer is pursuing that certificate, does the police officer earn salary in the same way that they will upon completion of the certificate program?

A They're paid from the date they're appointed, hired. 11:08:01AM

Q And is it the same rate of pay or is there a reduced rate of pay during that training? 11:08:04AM

A They have a step system in their salary plan. You can have that, I'm sure. 11:08:10AM

Q And how long does -- in the context of full-time police officers, what length of time does it take to complete the municipal police officer training program? 11:08:18AM

MS. ZWILLING: Are you asking how long the academy training is? I don't know that we're going to get into any commentary on whether or not an officer satisfies state requirements. 11:08:26AM

MR. GRAFF: I'm not asking about state requirements. 11:08:39AM

MS. ZWILLING: That's why I'm asking. Is your question how long the academy 11:08:41AM

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CYNTHIA DISTEFANO

A Eighteen months. 11:09:36AM

Q And is it possible that a police officer could satisfy this police officer training council requirement after -- over a period of time longer than 18 months? That is, could a police officer become a full-time non-probationary police officer before having satisfied this training requirement? And again, I'm not asking about whether or not any individual police departments have any rules. I'm only asking with respect to any rules by Suffolk County. 11:09:37AM

MR. NOVIKOFF: Objection. Form. 11:10:21AM

MS. ZWILLING: Objection. There may or may not be Civil Service rules, but every police department has their own rule. If you're asking about Suffolk County, you're including the Suffolk County Police Department. 11:10:21AM

MR. GRAFF: Suffolk County Civil Service. 11:10:34AM

MS. ZWILLING: Do they have rules in addition to what the PD may have? 11:10:35AM

MR. GRAFF: Yes. Do they have any of 11:10:38AM
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CYNTHIA DISTEFANO

training is?

MR. GRAFF: No. 11:08:45AM

BY MR. GRAFF: 11:08:45AM

Q Is there any Suffolk County rule or direction that has any bearing on the period of time between appointment and completion of that program to satisfy that requirement? 11:08:46AM

MS. ZWILLING: Civil Service requirement or PD requirement? 11:09:00AM

MR. GRAFF: Civil Service. I understand that's separate from PD requirement. 11:09:02AM

BY MR. GRAFF: 11:09:07AM

Q Does Civil Service have any specification, requirement with respect to how long after appointment an appointee has to complete that training program? 11:09:08AM

A There's no time set forth on the specification. 11:09:17AM

Q If we could turn back, actually, to CD 2 for police officer. 11:09:29AM

A Yes. 11:09:33AM

Q How long is the probationary period for the police officer? 11:09:33AM

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CYNTHIA DISTEFANO

their own rules that would bear on the question that I asked.

MR. NOVIKOFF: I don't even know what the question is anymore, so I'm objecting to the form. 11:10:41AM

MS. ZWILLING: I think state law prohibits anybody going out in the street until they've been through a police academy. 11:10:43AM

BY MR. GRAFF: 11:10:49AM

Q My question now -- and it might have become confused. The question that I'm asking is: Can a police officer complete their probationary period and be a full-time competitive class police officer before having satisfied this last requirement? 11:10:49AM

MS. ZWILLING: The state says they can't. It's a state requirement. Arie, respectfully, your question doesn't make sense. The state says you can't function as a police officer until you fulfill our educational requirement. So what is your question then? You're asking us if Suffolk County allows -- if Civil Service allows people to act as police officers that don't 11:11:10AM

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1 CYNTHIA DISTEFANO
2 comply with state requirements?
3 MR. GRAFF: No. I'm asking about 11:11:34AM
4 their status, whether they have -- whether
5 they have the absence of protections that is
6 characteristics of a probationary employee
7 or whether they can become a full-time
8 employee, non-probationary employee before
9 having obtained the certificate.
10 MR. NOVIKOFF: Objection to form. 11:11:54AM
11 MS. ZWILLING: It's apples and 11:11:55AM
12 oranges.
13 MR. NOVIKOFF: What is the relevancy 11:11:57AM
14 of this? Is there any dispute that any of
15 your clients or any of the officers at issue
16 in this case didn't have -- didn't go to the
17 police school and get that qualification?
18 MS. ZWILLING: You know, probationary 11:12:10AM
19 periods are matters of days on the calendar.
20 MR. GRAFF: Right. 11:12:14AM
21 MS. ZWILLING: Okay. This is 11:12:15AM
22 something -- it's an educational requirement
23 that the state imposes.
24 MR. NOVIKOFF: Why are you talking 11:12:21AM
25 about full-time employees? Isn't this whole
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1 CYNTHIA DISTEFANO
2 Civil Service.
3 MS. ZWILLING: I'm not trying to be 11:13:12AM
4 difficult, Arie. I understand there might
5 be some legitimate questions here, but the
6 way you're phrasing them really goes beyond
7 that and is really not driving at any useful
8 information. I think we're just not getting
9 the nub of what you're trying to ask.
10 Are you asking will Civil Service 11:13:27AM
11 certify people as having permanent
12 appointments as police officers that
13 don't -- that haven't trained in the
14 academy? Is that your question?
15 MR. GRAFF: Sure. Yes, yes. 11:13:39AM
16 MR. NOVIKOFF: Great. 11:13:40AM
17 A For a full-time police officer? 11:13:41AM
18 Q Yes. 11:13:43AM
19 A No. The police would not keep them. 11:13:44AM
20 MS. ZWILLING: The reality, Arie, is 11:13:47AM
21 that no PD is going to allow someone
22 permanent status if they haven't gone
23 through the academy. There are training
24 requirements beyond police academies.
25 That's only one of the minimums. There's
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1 CYNTHIA DISTEFANO
2 case about part-time/seasonal? I mean if
3 you want to address the qualifications for
4 that classification, I completely
5 understand.
6 MR. GRAFF: Maybe I can phrase it 11:12:37AM
7 differently.
8 BY MR. GRAFF: 11:12:38AM
9 Q Can a probationary police officer 11:12:39AM
10 satisfactorily complete their probationary
11 period without having actually completed the
12 municipal police officer training program?
13 MS. ZWILLING: That depends on what 11:12:51AM
14 the PD allows.
15 MR. GRAFF: I'm only asking as far as 11:12:54AM
16 Suffolk County Civil Service.
17 MR. NOVIKOFF: Can they or would they 11:12:57AM
18 be in violation of something if they did?
19 MR. GRAFF: Would they be in violation 11:13:01AM
20 of something --
21 MS. ZWILLING: The witness can't 11:13:03AM
22 comment on whether people comply with state
23 law.
24 MR. GRAFF: I'm not asking about state 11:13:08AM
25 law. I'm asking about any law specific to
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1 CYNTHIA DISTEFANO
2 training beyond that that an officer has to
3 complete before they can get permanent
4 status.
5 MR. GRAFF: Okay. I'm done with that 11:14:05AM
6 question.
7 BY MR. GRAFF: 11:14:11AM
8 Q Turning back to CD 3, Number 4 states, 11:14:12AM
9 "Candidates must successful pass a qualifying
10 psychological evaluation authorized by Suffolk
11 County Department of Civil Service."
12 Is that a psychological evaluation 11:14:23AM
13 different in any respect from the psychological
14 evaluation that applies in CD 2 to police
15 officers?
16 A No, it is not. 11:14:33AM
17 Q And what about in Number 5, the 11:14:35AM
18 qualifying medical valuation for part-time
19 seasonal, is that any different than the
20 qualifying medical for full-time?
21 A No. 11:14:44AM
22 Q What about the qualifying physical 11:14:46AM
23 fitness evaluation for part-time seasonal, is
24 that any different than the qualifying physical
25 fitness evaluation for full-time?
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1 CYNTHIA DISTEFANO
2 A There's no age limit on part-time 11:14:56AM
3 police officers. There is for full-time. So
4 the standards do make age adjustments for what's
5 expected.
6 Q Other than age, is there another -- 11:15:07AM
7 A No. 11:15:09AM
8 Q And Number 9. This is on CD 3. 11:15:12AM
9 "Candidates must successfully pass a polygraph
10 evaluation." Is that polygraph evaluation
11 requirement any different than in the case of
12 full-time police officers?
13 A No. 11:15:22AM
14 Q Is there such a thing as an agility 11:15:28AM
15 evaluation that is a requirement for Suffolk
16 County Civil Service with respect to any law
17 enforcement, public safety or police officer
18 position?
19 A For police officers, there's a 11:15:43AM
20 physical agility, physical fitness agility.
21 Q Does that apply only to full-time 11:15:48AM
22 police officers?
23 A No. 11:15:51AM
24 Q Is that a requirement also for 11:15:51AM
25 part-time/seasonal police officers?
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1 CYNTHIA DISTEFANO
2 it says.
3 MR. GRAFF: It will be more clear to 11:17:26AM
4 follow in the transcript.
5 BY MR. GRAFF: 11:17:28AM
6 Q "In emergency conditions, when the 11:17:29AM
7 full-time complement of police officers is
8 insufficient to ensure adequate protection of
9 life and property."
10 Ms. DiStefano, are these limitations 11:17:39AM
11 on part-time employment of police officers
12 applicable to the part-time employment of police
13 officers in the Incorporated Village of Ocean
14 Beach?
15 A Yes. 11:17:50AM
16 MR. NOVIKOFF: Objection. 11:17:51AM
17 BY MR. GRAFF: 11:17:51AM
18 Q And has that been the case from 2000 11:17:52AM
19 to the present?
20 A Yes. 11:17:57AM
21 MR. NOVIKOFF: Objection. 11:17:58AM
22 BY MR. GRAFF: 11:17:58AM
23 Q Was that the case, if you know, from 11:17:59AM
24 1990 to 2000?
25 A Yes. 11:18:02AM
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1 CYNTHIA DISTEFANO
2 A It is. 11:15:54AM
3 Q I may be overlooking it. Is that 11:15:56AM
4 something's that's listed on this?
5 A It's Number 6. 11:16:02AM
6 Q That's part of the physical fitness 11:16:03AM
7 evaluation?
8 A Agility, physical fitness are 11:16:06AM
9 synonymous.
10 Q Okay. Turning to the second page of 11:16:14AM
11 CD 3. My questions here are going to be -- it
12 would probably be more convenient if you just
13 read through the text of this page and let me
14 know when you're done.
15 A (Witness complies.) Okay. 11:16:40AM
16 Q And the heading "Limitations on 11:16:48AM
17 Part-Time Employment." Number 1, "Part-time
18 officers may be used under the following
19 conditions only and only as underlined. A, When
20 the full-time complement of police officers is
21 depleted due to court appearances, medical
22 absences or vacation."
23 Ms. DiStefano -- let me just read the 11:17:08AM
24 second one and then ask.
25 MR. NOVIKOFF: The document says what 11:17:23AM
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1 CYNTHIA DISTEFANO
2 Q Who determines whether the full-time 11:18:04AM
3 complement of police officers has been depleted
4 as set forth in Subheading A?
5 A The police chief or whoever is in 11:18:16AM
6 charge of the police department.
7 Q And is that something that needs to be 11:18:20AM
8 reported to Civil Service?
9 A We certify police payroll, and 11:18:26AM
10 sometimes they report that. We don't
11 micromanage police departments. If they deem it
12 an emergency, we accept that.
13 Q And other than that presenting for 11:18:38AM
14 certification the payroll that lists the
15 position of part time police officer, is there
16 any other documentation as to the basis on which
17 that part-time officer was hired that needs to
18 be provided to that Civil Service Department?
19 MS. ZWILLING: Are you asking about 11:18:56AM
20 Civil Service documentation? Because the
21 PDs may have their own documentation.
22 MR. GRAFF: I'm asking about Civil 11:19:02AM
23 Service documentation.
24 BY MR. GRAFF: 11:19:04AM
25 Q Other than stating they have employed 11:19:04AM
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CYNTHIA DISTEFANO

a part-time police officer, do they need to report anything else with respect to the matters set forth in Number 1 here?

A They're asked to explain which of the part-time restrictions that officer is employed under, whether it's that he won't earn over a stipulated amount of money or whether he will not work over half the normal work week.

Q And how is that inquiry communicated to -- how is that question posed to the municipality? Is it an oral question?

A It's on the report of personnel changes, the Civil Service 150 that they use to report any personnel changes.

Q And is it a requirement that on that form they indicate the basis for the part-time employment as set forth in Number 1 or Number 2 here?

MR. NOVIKOFF: Objection to form.

A We ask -- there's a column to address that. It's addressed on payroll if it's not there.

Q In part 1B, when it refers to emergency conditions, when the complement of TSG Reporting - Worldwide (877) 702-9580

CYNTHIA DISTEFANO

police officers is depleted, is there any direction or specification from Civil Service with respect to the duration of an emergency condition within the meaning of this Section 2B?

A We leave that up to the police department, but the part-time limitations would apply in the people they use to address it.

Q And the part-time limitations that you're referring to, is that what's Number 2?

A Yes.

Q So even in emergency conditions, when a part-time officer is hired on that basis, they still need to comply with Number 2?

A Yes.

Q When it refers to the Suffolk County Department of Civil Service rules, Rule 2 and -- Rule 2, the pound sign 14, is that referring to two different rules, Rule 2 and Rule 14?

A No, it's Rule 2 Number 14.

Q Do you know -- without consulting the document, do you know what that rule is?

A Yes, it's the definition of part-time.

Q And what is that definition?

A That the employment will not exceed TSG Reporting - Worldwide (877) 702-9580

CYNTHIA DISTEFANO

50 percent of the normal work week or that it will -- the person will not earn over a certain amount of money.

Q And is it -- in the actual rule itself, is the amount of money specified?

A It's \$5,000 or 25 percent of the entry-level salary for whatever that title is.

Q And is that 25 percent of the annual salary?

A Yes.

Q And how is normal week defined for purposes of measuring 50 percent of a normal week?

MR. NOVIKOFF: Objection to form.

A We contact whatever the jurisdiction is and ask them whether it's 35, 37 and a half, 40.

Q And is there -- could it be more than 40?

A No.

Q Would it be permissible under Civil Service regulation for a part-time officer to work 40 hours a week in the first week of the month, zero hours in weeks two, three and four, TSG Reporting - Worldwide (877) 702-9580

CYNTHIA DISTEFANO

such that their total month's employment is less than 50 percent of the normal month's employment?

MS. ZWILLING: Objection.

MR. NOVIKOFF: Objection to form.

MS. ZWILLING: Your question -- I

mean, there's all kinds of variables that

I'm not sure you intend to factor in there.

What if someone's sick? What if they're on vacation? Under those circumstances, they would be working zero hours. So I'm not sure that that's what you're talking about.

MR. GRAFF: I'm not asking about vacation time or sick time. That would be part of the normal work year, week or month of a full-time police officer.

BY MR. GRAFF:

Q I'm asking in a normal month, can they schedule themselves for full-time hours one week, no hours the rest of the month and still comply with the standard?

MS. ZWILLING: Objection. What do you mean, schedule themselves?

MR. GRAFF: Can they work on the TSG Reporting - Worldwide (877) 702-9580

1 CYNTHIA DISTEFANO
2 clock.
3 MR. NOVIKOFF: As opposed to off the 11:24:02AM
4 clock?
5 A If they work in the circumstances that 11:24:04AM
6 you described, then they would be employable
7 under the money limit rather than the time
8 limit.
9 **Q And what if they did that 10 days a 11:24:14AM**
10 **month, 12 months a year?**
11 MS. ZWILLING: Objection. I'm not 11:24:20AM
12 sure there's a question there.
13 MR. NOVIKOFF: Objection. 11:24:22AM
14 BY MR. GRAFF: 11:24:24AM
15 **Q What if they worked one week a month 11:24:24AM**
16 **full hours for each month of the year?**
17 MR. NOVIKOFF: Objection. 11:24:33AM
18 MS. ZWILLING: Are you asking if 11:24:34AM
19 that's permissible?
20 MR. GRAFF: Yes. 11:24:36AM
21 A If they did not earn over \$5,000 or 11:24:37AM
22 25 percent of the entry level salary, that would
23 be fine.
24 **Q Is the entry-level salary for 11:24:42AM**
25 **municipalities in Suffolk County set by Suffolk**
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1 CYNTHIA DISTEFANO
2 MS. ZWILLING: But whether or not it's 11:26:06AM
3 appropriate is --
4 MR. GRAFF: I said permissible, and I 11:26:10AM
5 specifically mean with respect to Civil
6 Service guidelines.
7 MS. ZWILLING: I'm going to object to 11:26:14AM
8 that, because she said there's no Civil
9 Service guidelines.
10 BY MR. GRAFF: 11:26:16AM
11 **Q Is there a guideline that would apply 11:26:17AM**
12 **to the situation that I described?**
13 A There are instances in the county 11:26:22AM
14 salary plan, which has 12 steps, where a
15 supervisor is earning less because he's newer
16 than a subordinate who's been there a long time.
17 So it's possible.
18 **Q What about law enforcement public 11:26:37AM**
19 **safety, are there any positions in those**
20 **categories where there would be a guideline that**
21 **would prohibit a subordinate from earning more**
22 **than a superior?**
23 MS. ZWILLING: A Civil Service 11:26:52AM
24 guideline? Because different jurisdictions,
25 different municipalities will have different
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1 CYNTHIA DISTEFANO
2 **County Civil Service?**
3 A It is set by the jurisdiction. Each 11:24:50AM
4 jurisdiction sets its own.
5 **Q Are there any guidelines at all as far 11:24:54AM**
6 **as the range that a jurisdiction can set?**
7 MS. ZWILLING: Civil Service 11:24:59AM
8 guidelines?
9 A Not Civil Service guidelines, no. 11:25:02AM
10 **Q Are there any guidelines, Civil 11:25:29AM**
11 **Service guidelines, with respect to the relative**
12 **starting salary of different police officer**
13 **positions? If that question makes sense as I**
14 **posed it.**
15 A Civil Service does not set salaries. 11:25:42AM
16 Each jurisdiction sets its own.
17 **Q Would it be permissible for a 11:25:47AM**
18 **subordinate police officer level position to be**
19 **earning more than that individual's supervisor**
20 **as far as Civil Service guidelines?**
21 MS. ZWILLING: Objection. If you want 11:26:00AM
22 to ask her if that is or is not in
23 compliance with Civil Service guidelines,
24 fine.
25 MR. GRAFF: That's what I'm asking. 11:26:05AM
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1 CYNTHIA DISTEFANO
2 internal guidelines. I think what the
3 witness is saying is Civil Service has no
4 involvement in setting salaries.
5 MR. GRAFF: I just want to make sure 11:27:06AM
6 that Ms. DiStefano was referring to any
7 position, including law enforcement
8 positions.
9 MS. ZWILLING: But it has to be 11:27:09AM
10 related to Civil Service restrictions.
11 MR. GRAFF: Yes, I understand. I 11:27:12AM
12 intend all of these questions to be on Civil
13 Service restrictions.
14 A There are no Civil Service 11:27:18AM
15 restrictions. If we see a salary that looks to
16 be an aberration, we may question whether that
17 is appropriately classified.
18 MR. GRAFF: Off the record. 11:27:43AM
19 (Whereupon, a discussion was held off 11:27:43AM
20 the record.)
21 BY MR. GRAFF: 11:33:23AM
22 **Q Ms. DiStefano, on either CD 2 or CD 3, 11:33:37AM**
23 **are the items under necessary special**
24 **requirements, are there ever exceptions**
25 **authorized by the Civil Service Department with**
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1 **CYNTHIA DISTEFANO**
2 **respect to necessary special services?**
3 MR. NOVIKOFF: Ever in the history of 11:33:53AM
4 the Civil Service Department? Is that the
5 question?
6 BY MR. GRAFF: 11:33:56AM
7 **Q From 2000 to the present? 11:33:57AM**
8 A I'm not aware of any. 11:33:59AM
9 **Q And is the same true for minimum 11:34:00AM**
10 **qualifications?**
11 MR. NOVIKOFF: Note my objection. 11:34:04AM
12 A Yes. 11:34:05AM
13 **Q On CD 2 -- and this is going to be, I 11:34:20AM**
14 **know, very basic material -- at the very bottom**
15 **of the page it says "competitive." What does**
16 **that mean in this context?**
17 A It means it's in the competitive 11:34:32AM
18 class.
19 **Q And could you describe what the 11:34:36AM**
20 **competitive class means in the context that you**
21 **use it?**
22 A That's subject to merit and fitness 11:34:42AM
23 through a competitive examination process.
24 **Q And is that also the request for 11:34:46AM**
25 **eligibles and eligible list and canvass letter,**
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1 **CYNTHIA DISTEFANO**
2 **Q So it would be the same list, one of 11:36:09AM**
3 **the top three?**
4 A Yes. 11:36:19AM
5 **Q So if it they were going to hire two 11:36:21AM**
6 **positions, then the second hire would be one of**
7 **the top four on the original list?**
8 A No -- it could be. It could be. 11:36:30AM
9 There are tie scores sometimes, where the top
10 has 10, 15 names in.
11 **Q Is it the case that a municipality can 11:36:46AM**
12 **request an eligible list that has a**
13 **jurisdictional limitation beyond just Suffolk**
14 **County?**
15 MS. ZWILLING: Are you asking about 11:36:56AM
16 residency requirements?
17 MR. GRAFF: Yes. 11:36:59AM
18 MS. ZWILLING: Could you just rephrase 11:36:59AM
19 the question.
20 BY MR. GRAFF: 11:37:02AM
21 **Q Do you understand what residency 11:37:02AM**
22 **requirement is?**
23 A Yes. 11:37:06AM
24 MS. ZWILLING: What is your question 11:37:06AM
25 about residency requirements?
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1 **CYNTHIA DISTEFANO**
2 **is that all characteristic of a competitive**
3 **class?**
4 A Yes, it is. 11:34:57AM
5 **Q And non-competitive, could you explain 11:34:58AM**
6 **what that means?**
7 A Non-competitive is subject to meeting 11:35:05AM
8 certain minimum qualifications, but there is no
9 written examination. There's no ranking system.
10 **Q With respect to the ranking system on 11:35:21AM**
11 **eligible lists, is it the case that the person**
12 **hired off an eligible list needs to be -- needs**
13 **to attain one of the top three scores on that**
14 **list?**
15 MR. NOVIKOFF: Objection to form. 11:35:40AM
16 A He must be among the top three willing 11:35:41AM
17 acceptors on the list.
18 **Q What if there are -- what if a 11:35:48AM**
19 **municipality is looking to hire more than one**
20 **individual for the same position? What effect**
21 **would that have on the requirement you just**
22 **referred to?**
23 A As you hire one, that might make 11:36:01AM
24 reachability more widespread lower down on the
25 list. That's the only difference.
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1 **CYNTHIA DISTEFANO**
2 MR. GRAFF: I don't mean to be going 11:37:06AM
3 that way. I just want to be sure the
4 witness knows the context I'm going in for
5 the next question.
6 MS. ZWILLING: Okay. So you're 11:37:06AM
7 withdrawing that question and you have a new
8 question?
9 MR. GRAFF: Yes. 11:37:06AM
10 MS. ZWILLING: Okay. 11:37:06AM
11 BY MR. GRAFF: 11:37:06AM
12 **Q On an eligible list that is not county 11:37:18AM**
13 **wide but that factors in residency requirements,**
14 **if that eligible list produces only one willing**
15 **qualified person and the municipality is looking**
16 **to hire more than one for the position, how can**
17 **they hire a second person? Let me rephrase that**
18 **question.**
19 **Are they then automatically required 11:37:44AM**
20 **to use the county-wide eligible list or is there**
21 **another way that they can hire a second person?**
22 MR. NOVIKOFF: Wait a second. You 11:37:53AM
23 asked one question. Then you said let me
24 rephrase that question, and then you said
25 "are they then."
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1 CYNTHIA DISTEFANO
2 MR. GRAFF: I don't want the question 11:38:01AM
3 to be confusing.
4 BY MR. GRAFF: 11:38:03AM
5 **Q If a jurisdictionally or a 11:38:04AM**
6 **geographically limited list is created and it**
7 **has, for example, one name on it, that person is**
8 **hired but the municipality wants to hire a**
9 **second person, is the municipality required to**
10 **hire that second person off of the county-wide**
11 **eligible list?**
12 A Yes. 11:38:24AM
13 **Q Are there any exceptions to that? 11:38:25AM**
14 A No. 11:38:26AM
15 **Q Are there any Civil Service classified 11:38:32AM**
16 **positions in the Incorporated Village of Ocean**
17 **Beach for which employees need to be hired in**
18 **the first instance off a county-wide list?**
19 MS. ZWILLING: Objection. 11:38:47AM
20 MR. NOVIKOFF: I'm going to object. 11:38:48AM
21 Are you referring just to police 11:38:48AM
22 officer or anybody?
23 MR. GRAFF: I'm asking about any Civil 11:38:53AM
24 Service positions in Ocean Beach where Ocean
25 Beach can't request a geographically or
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1 CYNTHIA DISTEFANO
2 and/or terminate, however you want to call
3 it, the plaintiffs.
4 MR. GRAFF: Mr. Novikoff, I don't need 11:40:05AM
5 to defend the relevancy of the question. If
6 any party here would like to seek a
7 protective order on that ground, fine, but I
8 will not explain the relevancy of that of
9 that question.
10 And I'd also ask you, especially if 11:40:15AM
11 you're going to be speaking on the record,
12 to perhaps return to your seat.
13 MR. NOVIKOFF: Why do I need to be 11:40:22AM
14 sitting down in order to speak when there's
15 a court reporter here taking every word that
16 I say down? There's no videotape here.
17 MR. GRAFF: The court reporter has 11:40:33AM
18 noted for the record that I object to your
19 standing and speaking.
20 MR. NOVIKOFF: You object to my 11:40:38AM
21 standing and speaking? Actually, I'm
22 sitting on a windowsill, because I have a
23 bad back and sitting on these soft chairs
24 really gives me a lot of pain. In fact,
25 it's really hurting me right now.
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1 CYNTHIA DISTEFANO
2 jurisdictionally limited list.
3 MS. ZWILLING: The residency 11:39:04AM
4 requirements are not Civil Service
5 requirements. They're imposed by the
6 municipality.
7 MR. GRAFF: Right. 11:39:08AM
8 MS. ZWILLING: So it's their choice 11:39:09AM
9 whether to ask for a residency restricted --
10 MR. GRAFF: The question I'm asking is 11:39:13AM
11 are there any positions with respect to
12 which they cannot choose to use a residency
13 requirement limited list.
14 MR. NOVIKOFF: Objection. You're 11:39:24AM
15 going to a place clearly where you're
16 suggesting that George Hesse was a not a
17 resident and therefore it must have been in
18 violation of some type of law, Civil Service
19 rule that he was hired by Ocean Beach. I
20 get it. What relevancy does that have to
21 this lawsuit, Mr. Hesse's residence? I
22 think at this point we need some type of
23 proffer, because there is not one allegation
24 in your complaint that deals with residency
25 as a basis for the decision not to rehire
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1 CYNTHIA DISTEFANO
2 MR. GRAFF: I will note that the 11:40:52AM
3 relevancy of that is unconnected to this
4 deposition. But if you're indicating you're
5 in pain sitting, then I withdraw the
6 objection.
7 BY MR. GRAFF: 11:41:27AM
8 **Q Are there any Civil Service classified 11:41:28AM**
9 **positions in Ocean Beach for which Ocean Beach**
10 **cannot request a residency limited eligible**
11 **list?**
12 A A jurisdiction may always request a 11:41:38AM
13 residency list.
14 MR. CONNOLLY: That was "may"? 11:41:48AM
15 THE WITNESS: May. 11:41:50AM
16 MR. GRAFF: If I could ask the court 11:42:03AM
17 reporter to mark as CD 4 a one-page document
18 produced by the county without Bates
19 numbers, headed "Sergeant (police towns and
20 villages)."
21 (Whereupon, a document Headed sergeant 11:42:24AM
22 (police towns and villages) was marked as
23 DiStefano Exhibit 4 for identification, as
24 of this date.)
25
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 11:42:50AM
3 **Q Again, Ms. DiStefano, if you can take 11:42:51AM**
4 **a moment to look at the document and tell me if**
5 **you've seen it before.**
6 A I have. 11:42:57AM
7 **Q Can you identify it? 11:42:58AM**
8 A It's our job specification for 11:42:59AM
9 sergeant, police, towns and villages.
10 **Q And are there any other specifications 11:43:04AM**
11 **for sergeant positions within police, towns and**
12 **villages other than this one?**
13 MR. NOVIKOFF: Objection. 11:43:15AM
14 MS. ZWILLING: You're talking about 11:43:16AM
15 Civil Service specifications.
16 MR. GRAFF: Yes. Yes. 11:43:16AM
17 A Not for towns and villages, no. 11:43:18AM
18 **Q I note the date on this document is at 11:43:20AM**
19 **the bottom, 7-18-94. Do you know whether this**
20 **is the current specifications?**
21 A I would have to check. I think it is. 11:43:30AM
22 **Q And minimum qualifications here has an 11:43:37AM**
23 **underlined subheading "promotional." Could you**
24 **explain what "promotional" means in this**
25 **context?**
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1 CYNTHIA DISTEFANO
2 A No. 11:44:53AM
3 **Q Could somebody -- could the village 11:44:55AM**
4 **employ somebody with the title sergeant who has**
5 **not satisfied the standards on CD 4?**
6 MR. NOVIKOFF: Could they employ 11:45:11AM
7 someone or would the employment of that
8 person be in violation of some Civil Service
9 regulation?
10 MR. GRAFF: Yes. 11:45:17AM
11 BY MR. GRAFF: 11:45:17AM
12 **Q Could they employ consistent with 11:45:18AM**
13 **Civil Service regulation?**
14 MR. NOVIKOFF: Note my objection to 11:45:22AM
15 the form, but it's getting close to a proper
16 question.
17 A Anyone employed as a sergeant must be 11:45:26AM
18 appointed to a sergeant's eligible list.
19 **Q And I'm not trying to nitpick over the 11:45:34AM**
20 **words. But employed as a sergeant, is that**
21 **based on the title of their position or on the**
22 **duties of their position, if that distinction**
23 **makes sense?**
24 MS. ZWILLING: Whose title? 11:45:48AM
25 MR. NOVIKOFF: Objection to form. 11:45:49AM
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1 CYNTHIA DISTEFANO
2 A It's only open to people who have 11:43:44AM
3 three years of permanent competitive status as a
4 police officer.
5 **Q And is that as a police officer with 11:43:49AM**
6 **competitive status in Suffolk County?**
7 A In whatever the town and village is. 11:43:53AM
8 A promotional list is only applicable in one
9 particular jurisdiction.
10 **Q And that's a municipal jurisdiction, 11:44:03AM**
11 **not the jurisdiction of the county?**
12 A That's correct. Everybody takes the 11:44:08AM
13 same test, but the list resulting is only for a
14 particular jurisdiction. So the Town of
15 Southold police officers would take this, but
16 they would only be certified to the Town of
17 Southold.
18 **Q And is there any Civil Service 11:44:24AM**
19 **specification or rule that would bear on the**
20 **question of whether a municipality can extend**
21 **the title sergeant to a police officer or other**
22 **person who has not satisfied this specification?**
23 MR. NOVIKOFF: Objection to form. 11:44:47AM
24 BY MR. GRAFF: 11:44:52AM
25 **Q Did you follow the question? 11:44:52AM**
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1 CYNTHIA DISTEFANO
2 MS. ZWILLING: Are you talking about 11:45:51AM
3 what their Civil Service title is or what
4 their department or the people they work
5 with may be calling them?
6 MR. NOVIKOFF: Or what they told 11:45:58AM
7 themselves out to be to the world.
8 MR. GRAFF: Right. 11:46:03AM
9 BY MR. GRAFF: 11:46:05AM
10 **Q Can their own department refer to them 11:46:06AM**
11 **by the title sergeant if they have not been**
12 **hired in accordance with this specification?**
13 MS. ZWILLING: I'm going to object to 11:46:16AM
14 that. If you want to ask if it's consistent
15 with --
16 MR. GRAFF: Yes. If it is consistent 11:46:19AM
17 with Civil Service regulations.
18 A No. 11:46:22AM
19 MR. NOVIKOFF: Their own department, 11:46:22AM
20 what does that mean?
21 BY MR. GRAFF: 11:46:22AM
22 **Q Is it a violation of Civil Service 11:46:24AM**
23 **regulation?**
24 MR. NOVIKOFF: Objection to the form. 11:46:26AM
25 I don't even know if that's a question.
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1 CYNTHIA DISTEFANO
2 MS. ZWILLING: Objection. 11:46:28AM
3 BY MR. GRAFF: 11:46:30AM
4 **Q Would it violate any Civil Service 11:46:31AM**
5 **regulation for a municipality, police department**
6 **in a municipality to refer to an employee by the**
7 **title of sergeant if that employee was not hired**
8 **in accordance with the specification?**
9 MR. NOVIKOFF: Objection to form. 11:46:45AM
10 MS. ZWILLING: Objection. 11:46:46AM
11 If you can answer it. 11:46:46AM
12 Obviously, Arie, there may be 11:46:53AM
13 problems, but they may not be problems with
14 respect to Civil Service.
15 MR. GRAFF: That's my question. 11:46:58AM
16 A If the person were reported to us as a 11:46:59AM
17 sergeant and not appointed from a sergeant list,
18 that would not be an approved appointment. If
19 we're aware that someone is functioning in that
20 capacity and is not legally appointed in the
21 title, we would pursue that with whatever the
22 employing jurisdiction was to get the
23 appointment in conformance -- the employment in
24 conformance.
25 MR. NOVIKOFF: Arie, isn't it almost 11:47:31AM
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 11:49:08AM
3 **Q My first question, do you recognize 11:49:09AM**
4 **the document?**
5 A I do. 11:49:11AM
6 **Q And is it correctly assembled as a 11:49:12AM**
7 **four-page document here?**
8 A Yes. 11:49:17AM
9 **Q That is, is it four pages? 11:49:17AM**
10 A Yes. 11:49:19AM
11 **Q Could you identify the document, 11:49:23AM**
12 **please?**
13 A It's a Civil Service application. 11:49:26AM
14 **Q Is this the application for any Civil 11:49:27AM**
15 **Service prospect position?**
16 A No, it's for open competitive and 11:49:37AM
17 non-competitive appointments.
18 **Q And what other Civil Service 11:49:41AM**
19 **classified positions are there?**
20 A Exempt, labor. 11:49:47AM
21 **Q And do those have their own 11:49:48AM**
22 **application forms?**
23 A They do not require applications. 11:49:51AM
24 **Q There's obviously a lot on the form. 11:49:57AM**
25 **I had a question, though, on Number 5. It's a**
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1 CYNTHIA DISTEFANO
2 not disputed that Mr. Hesse was in some
3 degree acting out of title, given the fact
4 that Civil Service, according to the
5 documentation you've produced at
6 depositions, put the beach on notice as to
7 that very existence?
8 MS. ZWILLING: Certainly the county's 11:47:49AM
9 not going to disagree with that.
10 MR. GRAFF: I'm really happy to talk 11:47:56AM
11 to you about these issues as much as you
12 want, but not as part of this deposition.
13 MR. NOVIKOFF: It just seems like 11:48:02AM
14 you're asking this witness to answer
15 questions that you've already established
16 through documentation and in prior
17 depositions.
18 MR. GRAFF: If I could ask the 11:48:13AM
19 reporter to please mark as CD 5 a four-page
20 document. This is from the county's
21 website.
22 (Whereupon, a four-page document was 11:48:25AM
23 marked as DiStefano Exhibit 5 for
24 identification, as of this date.)
25
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1 CYNTHIA DISTEFANO
2 **little subheading or capitalized, Legal**
3 **Residents Codes. Then it says, "Identify each**
4 **of the districts of which you are a legal**
5 **resident."**
6 **My question here, are there any Civil 11:50:14AM**
7 **Service specifications or guidelines that bear**
8 **on what a legal resident is in this context?**
9 A There's no definition in the Civil 11:50:28AM
10 Service law or rules as to legal resident.
11 **Q And do you know what definition 11:50:34AM**
12 **applies? If not a Civil Service definition, is**
13 **it a municipal definition?**
14 A It's where you lay your head at night. 11:50:46AM
15 **Q And what are you basing that on? 11:50:49AM**
16 A Experience in the department as to 11:50:54AM
17 what that means.
18 **Q Okay. If I were to stay at a hotel in 11:50:58AM**
19 **one jurisdiction for the night, would that**
20 **establish my legal residence in the context that**
21 **it's used here?**
22 A Sure. 11:51:12AM
23 MR. NOVIKOFF: Objection. 11:51:13AM
24 A It's where you live. 11:51:14AM
25 **Q What if a person has multiple places 11:51:17AM**
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1 **CYNTHIA DISTEFANO**
2 **where they live on a rotating basis, can a**
3 **person --**
4 MS. ZWILLING: The document seems to 11:51:23AM
5 allow for that. It says identify each of
6 the districts.
7 MR. NOVIKOFF: You're asking this 11:51:29AM
8 witness to opine on what the law is with
9 regard to how one establishes residencies?
10 MR. GRAFF: No. I'm asking if there's 11:51:36AM
11 any Civil Service standard or specification
12 that bears on the question I just asked,
13 namely whether a person can have multiple
14 legal residences. As you point out, the
15 document suggests that the answer is yes.
16 MR. NOVIKOFF: That would've been an 11:51:48AM
17 appropriate question instead of giving
18 hypotheticals.
19 A The legal residence codes referred to 11:51:53AM
20 in Number 5 all refer to the same place. It's
21 just subdivided, county, town, school district,
22 village, library district. That doesn't mean
23 they are all different places. It's all
24 different categories assigned to wherever they
25 normally live.
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1 **CYNTHIA DISTEFANO**
2 A We have contacted the county 11:53:01AM
3 attorney's office. We've contacted the board of
4 elections. We've contacted the police
5 department.
6 **Q I have some more questions about 11:53:16AM**
7 **residence, but I don't want to make it a memory**
8 **game. It's possible I have another document**
9 **that would help.**
10 MR. GRAFF: I will ask the reporter to 11:53:38AM
11 mark this document. It's a one-page
12 document form headed "Request for
13 Certification of Eligibles," and this is
14 also a document from the county's website.
15 (Whereupon, Request for certification 11:53:51AM
16 of eligibles and this is also a document
17 from the County's website was marked as
18 DiStefano Exhibit 6 for identification, as
19 of this date.)
20 BY MR. GRAFF: 11:54:56AM
21 **Q I'm going to move off of residency for 11:54:57AM**
22 **a moment.**
23 **Ms. DiStefano, do you recognize this 11:55:00AM**
24 **document? (Handing.)**
25 A I do. 11:55:03AM
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1 **CYNTHIA DISTEFANO**
2 **Q And is there any Civil Service 11:52:13AM**
3 **specification or guideline that bears on the**
4 **question whether an individual can have more**
5 **than one legal residence in this context?**
6 A One has to be a legal residence. If 11:52:23AM
7 that becomes an issue, then we have to explore
8 which one that is.
9 MR. GRAFF: Could you just read that 11:52:36AM
10 back.
11 (Whereupon, the requested portion was 11:52:46AM
12 read back by the court reporter: A, One has
13 to be a legal residence. If that becomes an
14 issue, then we have to explore which one
15 that is.)
16 BY MR. GRAFF: 11:52:47AM
17 **Q And do you mean only one location has 11:52:47AM**
18 **a legal residence?**
19 A Yes. 11:52:51AM
20 **Q And how would you go about exploring 11:52:53AM**
21 **that?**
22 MR. NOVIKOFF: The witness or the 11:52:58AM
23 Civil Service Department?
24 MR. GRAFF: The Civil Service 11:52:59AM
25 Department.
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1 **CYNTHIA DISTEFANO**
2 **Q Could you identify the document, 11:55:03AM**
3 **please?**
4 A It's a request for a list, a request 11:55:05AM
5 for certification of eligibles.
6 **Q And it says underneath the heading 11:55:09AM**
7 **"for appointing authorities only." What does**
8 **"appointing authority" refer to in this context?**
9 A The appointing authority for whichever 11:55:19AM
10 jurisdiction is requesting the list.
11 **Q And is the identity of the appointing 11:55:23AM**
12 **authority something that Civil Service**
13 **specifications control or is that something a**
14 **municipality determines for itself?**
15 MR. NOVIKOFF: Objection. Form. 11:55:33AM
16 A The municipality determines, and they 11:55:34AM
17 file a signature slip with us identifying who is
18 authorized to sign for them.
19 **Q And is that a form that they fill out 11:55:48AM**
20 **and complete with respect to identifying**
21 **their --**
22 A Yes. 11:55:54AM
23 **Q And does every municipality have to 11:55:58AM**
24 **file such a form identifying the appointing**
25 **authority?**
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1 CYNTHIA DISTEFANO
2 A Yes. 11:56:05AM
3 **Q Can a municipality have more than one 11:56:06AM**
4 **appointing authority, say, for different parts**
5 **of that municipality?**
6 A Yes. The county has appointing 11:56:15AM
7 authorities in each department.
8 **Q Within each department within the 11:56:18AM**
9 **municipality?**
10 A Within the county. The head of each 11:56:21AM
11 department within the county is an appointing
12 authority.
13 **Q Let's talk specifically within Ocean 11:56:28AM**
14 **Beach. Could Ocean Beach have simultaneously**
15 **more than one appointing authority for Ocean**
16 **Beach?**
17 MR. NOVIKOFF: Objection. 11:56:37AM
18 A They normally have one, and they can 11:56:38AM
19 assign alternate signatures for our purposes.
20 The mayor and the board would be the appointing
21 authority.
22 **Q And who signs for the board? 11:56:48AM**
23 MR. NOVIKOFF: Objection. 11:56:54AM
24 A I don't know if anybody signs for the 11:56:54AM
25 board on Ocean Beach.
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1 CYNTHIA DISTEFANO
2 MS. ZWILLING: What is whose purpose? 11:57:54AM
3 MR. NOVIKOFF: Exactly. 11:57:57AM
4 BY MR. GRAFF: 11:57:57AM
5 **Q For what purpose would an appointing 11:57:58AM**
6 **authority complete this form and submit it to**
7 **Civil Service?**
8 MS. ZWILLING: Objection. 11:58:03AM
9 MR. NOVIKOFF: Objection. 11:58:04AM
10 MS. ZWILLING: She can't speak to 11:58:05AM
11 what's in the mind of the appointing
12 authority. If you want to ask why the Civil
13 Service makes this available or under what
14 circumstances do they request it be filed, I
15 have no objection.
16 BY MR. GRAFF: 11:58:16AM
17 **Q Under what circumstances does Civil 11:58:18AM**
18 **Service request this be filed by the appointing**
19 **authority?**
20 A We do not request this form. 11:58:23AM
21 **Q Under what circumstances would a 11:58:24AM**
22 **municipality submit this form to the Department**
23 **of Civil Service?**
24 MR. NOVIKOFF: Objection to form. 11:58:35AM
25 A If they have a position they want to 11:58:36AM
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1 CYNTHIA DISTEFANO
2 **Q Do you know who the appointing 11:56:59AM**
3 **authority is for Ocean Beach?**
4 MS. ZWILLING: At what time? 11:57:02AM
5 MR. GRAFF: Today. 11:57:04AM
6 A I think right now it's the mayor and 11:57:04AM
7 the clerk who sign the signature slip for us.
8 **Q And are they joint appointing 11:57:11AM**
9 **authorities or can either of them sign that**
10 **slip?**
11 A Either of them could if both names are 11:57:16AM
12 on it.
13 MR. GRAFF: To the extent an 11:57:21AM
14 appointing authority form exists for Ocean
15 Beach, if it wasn't produced, if you could
16 please produce that.
17 MS. ZWILLING: For which time frame? 11:57:29AM
18 MR. GRAFF: The duration of 11:57:30AM
19 plaintiffs' employment.
20 MS. ZWILLING: Which goes back to? 11:57:35AM
21 MR. GRAFF: 1991. 11:57:42AM
22 BY MR. GRAFF: 11:57:46AM
23 **Q What is the purpose of this request 11:57:48AM**
24 **for a certificate of eligibles form?**
25 MR. NOVIKOFF: Same objection. 11:57:54AM
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1 CYNTHIA DISTEFANO
2 fill in the competitive class, they submit this
3 form to us and we send them a list of eligible
4 people from which they may choose their
5 employee.
6 **Q And Number 1, there are two bubbles, 11:58:47AM**
7 **one for residents only, one for entire list. Is**
8 **this the place where they indicate whether they**
9 **want the residence list or the county-wide list?**
10 A It's obvious. 11:59:03AM
11 **Q I wasn't sure if "entire list" might 11:59:03AM**
12 **refer to anything other than the county-wide**
13 **list.**
14 **And is it ever possible -- strike 11:59:19AM**
15 **that.**
16 **Is it ever consistent the with Civil 11:59:24AM**
17 **Service guidelines or specifications for a**
18 **municipality to appoint or hire somebody for a**
19 **Civil Service competitive class position without**
20 **having first requested a certificate of**
21 **eligibles?**
22 A What was the beginning of your 11:59:42AM
23 question?
24 **Q Is it permissible under Civil Service 11:59:43AM**
25 **guidelines or standards?**
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1 CYNTHIA DISTEFANO
2 A No. 11:59:49AM
3 Q You can put that aside. 11:59:53AM
4 Prior to the village administrator and 12:00:03PM
5 mayor being the appointed authorities in Ocean
6 Beach, do you know who immediately prior to that
7 the appointing authority was?
8 A I think it's the village clerk, not 12:00:17PM
9 the village administrator.
10 I don't know. 12:00:20PM
11 Q Does Civil Service have any guidelines 12:00:23PM
12 or specifications as far as who the appropriate
13 person within a municipality is to designate as
14 that appointing authority for the municipality?
15 A Yes. 12:00:35PM
16 Q What are those guidelines? 12:00:35PM
17 A The definitions in Civil Service law 12:00:37PM
18 to unclassified positions define department
19 heads who have the power to hire and fire. So
20 if someone is in the unclassified service in --
21 the mayor, a department head, town supervisor,
22 they are obviously the appointing authority.
23 Q Does the Civil Service Department -- 12:01:03PM
24 just for terminology, I've been referring to
25 guidelines or specifications. Do those terms
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1 CYNTHIA DISTEFANO
2 going to be objectionable or confusing, I
3 can drop it.
4 MS. ZWILLING: I'm guessing it 12:02:12PM
5 probably will be, but we'll see with the
6 individual questions.
7 BY MR. GRAFF: 12:02:15PM
8 Q If I say rule, would -- 12:02:15PM
9 MS. ZWILLING: Are they rules or regs? 12:02:17PM
10 THE WITNESS: They're Civil Service 12:02:19PM
11 rules and they're New York State laws, and
12 there are guidelines on how to apply those
13 things.
14 BY MR. GRAFF: 12:02:28PM
15 Q Okay. So maybe that was not the best 12:02:28PM
16 angle to simplify things.
17 Are there any Civil Service rules, 12:02:36PM
18 guidelines or specifications with respect to who
19 in a municipality can exercise hire and fire
20 authority?
21 A I just explained that. Civil Service 12:02:49PM
22 law and unclassified positions set that forth.
23 Q Okay. I'm not sure if I follow. 12:02:55PM
24 Can a person who holds a position in 12:03:06PM
25 the classified -- a Civil Service classified
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1 CYNTHIA DISTEFANO
2 mean the same thing in the context of Civil
3 Service?
4 A When I think of specification, I think 12:01:16PM
5 of the job specification, the description of a
6 particular class of positions.
7 Q So if I intend to ask a question more 12:01:=
8 22PM
9 broadly, any sort of Civil Service rule,
10 directive, is there a term I can use that would
11 shorten the question and we could understand
12 what I'm referring to?
13 A I would leave out specification in 12:01:37PM
14 that context.
15 Q Guideline is going to hit it? 12:01:41PM
16 A Guideline is not as binding as a law 12:01:43PM
17 or a rule. So you decide how you want to ask
18 the question.
19 MS. ZWILLING: In Civil Service, there 12:01:53PM
20 are local rules and there's also the state
21 Civil Service law.
22 MR. GRAFF: Right. I'm just looking 12:01:57PM
23 if there's a way to make the communication
24 easier, if there's a word I can use just for
25 the context of this deposition rather than
guideline, rule, regulation. If that's
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1 CYNTHIA DISTEFANO
2 position exercise hire or fire authority under
3 those guidelines, rules, specifications?
4 MR. NOVIKOFF: Objection. 12:03:20PM
5 A There are non-competitive department 12:03:21PM
6 heads in Suffolk County who are appointing
7 authorities. The personnel director is one.
8 The commissioner of social services is one. The
9 director of real property tax service is
10 another.
11 Q But an employee who holds a permanent 12:03:41PM
12 competitive class position cannot exercise
13 hire/fire authority under those guidelines,
14 rules, specifications?
15 MR. NOVIKOFF: Objection. 12:03:51PM
16 Is that a statement or a question? 12:03:51PM
17 MR. GRAFF: Question. 12:03:53PM
18 MR. NOVIKOFF: Objection to form. 12:03:54PM
19 A I'm not aware of any competitive class 12:04:00PM
20 person who would be an appointing authority.
21 Q Is there anything that you could 12:04:12PM
22 consult to determine definitively whether that's
23 the case?
24 MR. NOVIKOFF: Is there anything she 12:04:19PM
25 can consult?
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 12:04:21PM
3 **Q Are there any documents -- 12:04:22PM**
4 A It doesn't meet -- 12:04:23PM
5 MR. NOVIKOFF: Note my objection to 12:04:32PM
6 the form.
7 MS. ZWILLING: You can answer. 12:04:36PM
8 A No, appointing authorities are 12:04:37PM
9 normally not in a competitive class because
10 they're specifically allowed not to be based on
11 that status of being an appointing authority, an
12 elected official or someone with the power to
13 hire, and that's defined in whatever the laws
14 are governing a particular municipality, whether
15 it's a suburban town that lines out the
16 departments or the county charter that describes
17 the departments or village law, which describes
18 the power of the mayor, town law, which
19 describes the power of a supervisor. So none of
20 those are competitive.
21 MS. ZWILLING: And that's another 12:05:18PM
22 situation, Arie. There are lots of laws
23 governing these things, but it's not Civil
24 Service law, and this witness is not being
25 an attorney or being offered for any expert
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1 CYNTHIA DISTEFANO
2 A Yes. We have manuals for various 12:06:29PM
3 things. The state produces manuals for various
4 things.
5 **Q What types or what are the various 12:06:36PM**
6 **things that Suffolk County produces its own**
7 **manuals for, Suffolk County Civil Service?**
8 A Layoff procedures. That's the most 12:06:43PM
9 official of the ones we do. That's available to
10 the public.
11 **Q And are there any unofficial manuals? 12:06:59PM**
12 A There's interviewing techniques. 12:07:03PM
13 That's really in-house.
14 **Q Are there any other in-house manuals? 12:07:08PM**
15 A Not that we produce. 12:07:13PM
16 **Q Are there other manuals that you use 12:07:19PM**
17 **that neither the state nor Suffolk County Civil**
18 **Service produces?**
19 A No. 12:07:27PM
20 **Q Other than state Civil Service law, 12:07:28PM**
21 **Suffolk County Civil Service rules, job**
22 **specifications and manuals, are there any other**
23 **writings that govern the conduct or set forth**
24 **requirements for Suffolk County Civil Service?**
25 MS. ZWILLING: Broadly speaking, the 12:07:46PM
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1 CYNTHIA DISTEFANO
2 purposes.
3 MR. GRAFF: I'm just looking for 12:05:29PM
4 whether there are Civil Service.
5 MS. ZWILLING: Tons of other stuff. 12:05:31PM
6 A Civil Service law specifically is the 12:05:33PM
7 section on unclassified service.
8 **Q The Civil Service guidelines that you 12:05:43PM**
9 **referred to before, where are those published?**
10 MR. NOVIKOFF: What, the state? 12:05:51PM
11 A We have state -- New York State Civil 12:05:52PM
12 Service law and we have Suffolk County Civil
13 Service rules. Both are published.
14 **Q Is there a separate category of 12:06:01PM**
15 **Suffolk County Civil Service guidelines?**
16 A No. 12:06:05PM
17 **Q Is there a separate category of 12:06:06PM**
18 **Suffolk County Civil Service specifications?**
19 A Specifications are the job 12:06:11PM
20 specifications. Each title has one.
21 **Q Other than the job specifications and 12:06:15PM**
22 **the Suffolk County Civil Service rules, are**
23 **there any other Suffolk County Civil Service**
24 **writings that bear on Civil Service issues in**
25 **Suffolk County?**
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1 CYNTHIA DISTEFANO
2 county charter, village law, the
3 municipal --
4 MR. GRAFF: Right. I'm looking at the 12:07:50PM
5 level of the Civil Service Department.
6 MS. ZWILLING: All of those things do 12:07:53PM
7 apply.
8 MR. GRAFF: I understand. 12:07:56PM
9 BY MR. GRAFF: 12:07:56PM
10 **Q Does Civil Service Department create 12:07:57PM**
11 **anything else that governs its conduct in Civil**
12 **Service issues in Suffolk County?**
13 A We create internal memos. 12:08:06PM
14 **Q Anything else? 12:08:10PM**
15 A Reports, memos. 12:08:14PM
16 **Q Are those internal reports? 12:08:16PM**
17 A They're internal. 12:08:18PM
18 MS. ZWILLING: They create paperwork 12:08:20PM
19 in the normal course of business, but I
20 don't think that's what you're driving at.
21 MR. GRAFF: No. 12:08:25PM
22 BY MR. GRAFF: 12:08:26PM
23 **Q Who creates the manual for layoff 12:08:26PM**
24 **procedures that you referred to?**
25 MS. ZWILLING: What does layoff 12:08:33PM
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1 CYNTHIA DISTEFANO
2 procedures have to do with this case? I
3 assume we're talking about mass layoffs in
4 the event of a budget difficulty.
5 Is that what we're speaking of? 12:08:42PM
6 THE WITNESS: Yes. 12:08:43PM
7 BY MR. GRAFF: 12:08:45PM
8 **Q So who creates that? 12:08:45PM**
9 MS. ZWILLING: That pertains to the 12:08:48PM
10 county, right?
11 MR. NOVIKOFF: It has no relevancy. 12:08:51PM
12 A It pertains to the competitive class. 12:08:56PM
13 **Q And who drafts it? 12:09:01PM**
14 A Whether it's a layoff in the county or 12:09:03PM
15 in any of the jurisdictions, it would be applied
16 the same way.
17 **Q Who creates that memo? 12:09:08PM**
18 A Our examinations division in 12:09:10PM
19 compliance with Civil Service -- state Civil
20 Service law.
21 **Q And do you know when the most recent 12:09:23PM**
22 **version of that manual was created?**
23 A I do not. 12:09:27PM
24 **Q Have you seen that manual? 12:09:28PM**
25 A Of course. 12:09:29PM
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1 CYNTHIA DISTEFANO
2 been exhausted, there are less than three
3 willing acceptors, an appointing authority may
4 hire a provisional who meets the minimum
5 qualifications and who has to take the next
6 examination offered and be reachable for
7 appointment when that list is established.
8 **Q And when you say "no eligible list," 12:10:47PM**
9 **is that referring both to an area limited list**
10 **and a county-wide list?**
11 A Yes. 12:10:57PM
12 **Q So neither of those can exist? 12:10:57PM**
13 A Yes. 12:11:00PM
14 **Q Under what circumstances would there 12:11:04PM**
15 **not be in existence an eligible list for a**
16 **position?**
17 A Eligible lists can last for four years 12:11:10PM
18 by law. If they expire at the end of that
19 four-year period and there has not been a new
20 examination to establish a new list, then there
21 is no eligible list, or if it's a brand new
22 title and no exam has been given yet.
23 **Q And are exams given -- that is, for 12:11:28PM**
24 **existing positions, are exams given at regular**
25 **intervals?**
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1 CYNTHIA DISTEFANO
2 **Q Have you read through it? 12:09:30PM**
3 A Yes. 12:09:35PM
4 MR. GRAFF: We request production of 12:09:35PM
5 that.
6 MS. ZWILLING: I'm going to object, 12:09:38PM
7 because there was nobody on any side of this
8 case that was laid off.
9 MR. GRAFF: That's a question of 12:09:44PM
10 terminology.
11 MS. ZWILLING: As Civil Service 12:09:46PM
12 defines layoff, I think we're talking about
13 a very different situation.
14 MR. GRAFF: I imagine if you could 12:09:51PM
15 just produce the document, I could see that.
16 MS. ZWILLING: We'll take it under 12:09:56PM
17 advisement.
18 BY MR. GRAFF: 12:10:12PM
19 **Q Ms. DiStefano, is there such a thing 12:10:13PM**
20 **as a provisional appointment in the context of**
21 **Suffolk County Civil Service?**
22 A Yes, there is. 12:10:19PM
23 **Q Could you explain what that is? 12:10:20PM**
24 A If there's no available eligible list 12:10:22PM
25 for a specific title or if the eligible list has
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1 CYNTHIA DISTEFANO
2 A It depends. We do some of our own 12:11:36PM
3 exams. The state produces most of ours. The
4 state does have a schedule for some common
5 exams, but there's really no set time I could
6 say every certain number of years we'll give
7 this or that.
8 **Q And do you know on what basis it's 12:11:53PM**
9 **determined when to hold an exam for a given**
10 **title?**
11 A If we have a provisional in the title, 12:11:59PM
12 we order the examination. Police officer
13 examination is given every two years.
14 **Q And if there's a provisional in the 12:12:09PM**
15 **title of police officer, would that accelerate**
16 **the timing of the next exam?**
17 A There is never a provisional in the 12:12:17PM
18 title of police officer.
19 **Q If there's a provisional in a title 12:12:21PM**
20 **for which no eligible list exists, how soon**
21 **after that provisional appointment is made is**
22 **the next exam offered?**
23 MS. ZWILLING: Arie, the witness has 12:12:33PM
24 just testified that there can be no
25 provisional police officers. So your
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1 CYNTHIA DISTEFANO
2 questions with respect provisions are really
3 way beyond anything that's relevant in this
4 case.
5 BY MR. GRAFF: 12:12:45PM
6 **Q Can there be a provisional appointment 12:12:45PM**
7 **to police sergeant?**
8 MR. NOVIKOFF: In accordance with 12:12:52PM
9 Civil Service law?
10 MR. GRAFF: Yes. 12:12:54PM
11 A I can't say I've ever seen one, but I 12:12:58PM
12 would think the possibility could exist.
13 **Q If that possibility were to come 12:13:02PM**
14 **about, would an examination for the position of**
15 **police sergeant be scheduled?**
16 A Police sergeant, I believe, are on a 12:13:14PM
17 regular rotation.
18 **Q Do you know what the interval of that 12:13:19PM**
19 **is?**
20 A I think it's two years. I'm not sure. 12:13:22PM
21 Two or four.
22 **Q And say that right after an 12:13:26PM**
23 **examination is administered, within a few weeks,**
24 **a provisional appointment is made to the**
25 **position of police sergeant, would that**
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 12:14:27PM
3 **Q Do you know approximately how many 12:14:27PM**
4 **people are on the current eligible list for**
5 **police sergeant?**
6 A It's a promotional list. So the 12:14:35PM
7 number of people on it -- I don't know the
8 figure, but there would be a total figure. But
9 the promotional list is only certified to a
10 particular municipality. So there would be a
11 huge number for, say, the Suffolk County Police
12 Department and a lesser number for the local
13 jurisdictions.
14 **Q And when it's a promotional list, are 12:14:55PM**
15 **there any exceptions in which a person can get**
16 **onto that list without having satisfied the time**
17 **in position requirement?**
18 A No. 12:15:08PM
19 **Q And does Civil Service have to -- do 12:15:15PM**
20 **you know what the passing score is for the**
21 **sergeant's exam?**
22 A It's 70 for all Civil Service 12:15:26PM
23 examinations.
24 **Q And has that been the case from 2000 12:15:29PM**
25 **to the present?**
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1 CYNTHIA DISTEFANO
2 **accelerate the timing of the next exam?**
3 A No. 12:13:38PM
4 MS. ZWILLING: Why would a provisional 12:13:40PM
5 appointment be made a few weeks after an
6 exam?
7 MR. GRAFF: A short period after the 12:13:47PM
8 exam and the provisional list is exhausted.
9 I'm just asking -- or the eligible list is
10 exhausted. I'm just asking --
11 MS. ZWILLING: Eligible list exhausted 12:13:53PM
12 for police sergeant? Do you think that ever
13 happens?
14 MR. NOVIKOFF: Arie is asking this 12:13:59PM
15 witness questions that are contained in the
16 various Civil Service laws in McKinney's and
17 out there. In fact, I find all these
18 questions objectionable.
19 THE WITNESS: Maybe for a locality, 12:14:18PM
20 not for the county.
21 MS. ZWILLING: Not for the county, no. 12:14:21PM
22 People die on that list all the time, I
23 think. Over and over, the same people.
24 THE WITNESS: That's why we give it 12:14:25PM
25 every two years.
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1 CYNTHIA DISTEFANO
2 A Its always been the case, to my 12:15:34PM
3 knowledge.
4 **Q When a provisional appointment is 12:15:39PM**
5 **made, does a municipality need to notify Civil**
6 **Service pursuant to any Civil Service rules,**
7 **specifications, guidelines?**
8 MR. NOVIKOFF: Objection to form. 12:15:53PM
9 A Any appointment, any personnel action 12:15:54PM
10 has to be reported to Civil Service.
11 **Q And does any particular information 12:15:58PM**
12 **need to be reported in connection with the**
13 **provisional appointment rather than another type**
14 **of personnel change?**
15 MR. NOVIKOFF: Objection to form. 12:16:10PM
16 A A personnel change has to be submitted 12:16:11PM
17 and the application has to be submitted and
18 approved so it's on file for the next
19 examination.
20 **Q And when a provisional appointment is 12:16:21PM**
21 **made, is the persona appointed to that position**
22 **required to take the next exam for that position**
23 **when it is offered?**
24 A Yes. I said that. 12:16:33PM
25 MR. NOVIKOFF: Required? 12:16:34PM
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 12:16:35PM
3 **Q And what if such a person does not 12:16:36PM**
4 **pass the first administration after their**
5 **provisional appointment, can they, pursuant to**
6 **Civil Service rules, guidelines, remain in that**
7 **position?**
8 A If there is a valid eligible list with 12:16:52PM
9 the name of three willing acceptors, then the
10 person who fails has to be out within 60 days.
11 If there are no willing -- if there are not
12 three willing acceptors, then the jurisdiction
13 could apply for a second provisional appointment
14 for the person who failed.
15 **Q And would that second provisional 12:17:15PM**
16 **appointment also require, under Civil Service**
17 **guidelines, rules, specification, that the**
18 **person that was re-provisionally appointed take**
19 **the next scheduled exam after that?**
20 A Yes. 12:17:30PM
21 **Q And is it possible to get a third 12:17:30PM**
22 **provisional appointment if there are not three**
23 **willing eligibles?**
24 A Civil Service rules say that if the 12:17:38PM
25 person fails two examinations, he cannot have a
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1 CYNTHIA DISTEFANO
2 **Service, under its own guidelines, rules or**
3 **specifications or state law, is required to**
4 **generate an eligible list?**
5 MR. NOVIKOFF: Objection to form. 12:19:20PM
6 MS. ZWILLING: Generate the list or 12:19:21PM
7 give the test?
8 MR. GRAFF: Administer the test and 12:19:24PM
9 generate the list on the basis of the test.
10 MS. ZWILLING: They're two different 12:19:27PM
11 things, obviously.
12 MR. GRAFF: Yes. 12:19:29PM
13 MR. NOVIKOFF: Objection to form. 12:19:29PM
14 A There is something in Civil Service 12:19:33PM
15 law about a time frame, but it's not always met.
16 It's an ideal, but it's not always met because
17 the tests are not always offered in a timely
18 fashion.
19 MR. NOVIKOFF: Just note my objection 12:19:51PM
20 to all these questions. They seem to be
21 asking this witness to opine on issues that
22 are memorialized in Civil Service law or in
23 various documentation, and you're asking her
24 to basically be an expert witness on Civil
25 Service law.
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1 CYNTHIA DISTEFANO
2 third provisional appointment.
3 **Q What if a person fails to take a 12:17:46PM**
4 **scheduled exam that is offered, does that count**
5 **as one of their two fails?**
6 A Then they have to be removed from the 12:17:55PM
7 position within I think it's 7 to 10 business
8 days from the establishment of the list.
9 **Q Are there any exceptions to that? 12:18:01PM**
10 A No. 12:18:03PM
11 **Q Is there any maximum length of time 12:18:20PM**
12 **that a provisional appointment can continue if**
13 **no exam is scheduled --**
14 **(Whereupon, a discussion was held off 12:18:41PM**
15 **the record.)**
16 MR. GRAFF: For clarity, can we just 12:18:41PM
17 strike that? That will be off the record.
18 A The provisional can remain until the 12:18:50PM
19 establishment of an eligible list, and then
20 action must be taken within 60 days of the
21 establishment of that list.
22 **Q And does the fact that there's 12:18:59PM**
23 **somebody in the provisional appointment -- I**
24 **know you said an eligible list would be created.**
25 **Is there any period of time in which Civil**
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 12:20:08PM
3 **Q Ms. DiStefano, is there such a thing 12:20:09PM**
4 **as a temporary appointment to a competitive**
5 **class Civil Service position?**
6 A Yes, there is. 12:20:16PM
7 **Q And could you explain what a temporary 12:20:17PM**
8 **appointment is?**
9 A A temporary appointment is limited 12:20:21PM
10 to -- up to six months, it can be made without
11 using an eligible list, and after six months --
12 I haven't looked at this in a while. It has to
13 be -- no, I'm not sure of the time frame
14 anymore.
15 **Q Would it refresh your recollection if 12:20:59PM**
16 **I said past six months, the rule is that they**
17 **need to be on an eligible list but the ranking**
18 **can be disregarded?**
19 A There are three categories -- 12:21:09PM
20 MR. NOVIKOFF: Hold on. 12:21:12PM
21 You're refreshing her recollection by 12:21:12PM
22 telling her what the rule is, but your
23 underlining question is asking her what is
24 the rule is.
25 MR. GRAFF: I don't know that that's 12:21:21PM
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1 CYNTHIA DISTEFANO
2 necessarily the rule that's applicable in
3 the context of Suffolk County Department of
4 Civil Service. That's what I'm asking. I'm
5 aware of a rule. I'm trying to confirm if
6 that's what the rule is here.
7 MS. ZWILLING: May I suggest you just 12:21:31PM
8 ask her what of the rule she knows.
9 MR. NOVIKOFF: Right. Is it codified 12:21:36PM
10 somewhere so you can look it up? Because
11 apparently you have it. If you're asking
12 her questions as to what the Civil Service
13 law requires, that is somewhere memorialized
14 in either the New York State Civil Service
15 law or the Suffolk County regs. If it's
16 not, then I think it's an appropriate
17 question, Mr. Graff. But what you're asking
18 her is to give you answers -- and I think by
19 the witness nodding her head, she agrees
20 with me. You're asking her questions about
21 what the Civil Service law requires. To me,
22 that means either you haven't done your
23 research or it's readily ascertainable
24 through McKinney's or some other
25 publication, and I think it's inappropriate
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1 CYNTHIA DISTEFANO
2 exists in McKinney's does not necessarily
3 mean that that is the law as understood and
4 applied by the department. It's a 30(b)(6)
5 designee. I'm asking her --
6 MR. NOVIKOFF: And ask those 12:23:19PM
7 questions, then. Then ask her does the law
8 as codified in Civil Service law X, have you
9 ever applied it inconsistently or are there
10 exceptions that are not codified. I get
11 those questions, Arie. I understand this
12 completely. But if you're going to ask this
13 witness for an hour and a half what a
14 specific law is, that's improper because
15 that's in McKinney's.
16 BY MR. GRAFF: 12:23:42PM
17 **Q Ms. DiStefano, do you know where, if 12:23:42PM**
18 **anywhere, the rules governing temporary**
19 **appointments are codified?**
20 A In McKinney's. 12:23:51PM
21 **Q Where in McKinney's? 12:23:53PM**
22 A In Civil Service law. 12:23:55PM
23 **Q Is there a particular provision? 12:23:58PM**
24 MS. ZWILLING: Arie, you're the 12:24:00PM
25 attorney here.
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1 CYNTHIA DISTEFANO
2 to keep asking this witness questions as to
3 is there a -- for example, you asked
4 this question, is there a provision --
5 MR. GRAFF: No, no. Your speaking is 12:22:30PM
6 improper here.
7 MR. NOVIKOFF: Then you can call the 12:22:30PM
8 judge up, because I'm going to be making a
9 motion for sanctions on this one.
10 You've asked the witness, for example, 12:22:33PM
11 is there such a thing as a provisional
12 employee. I guarantee you there's probably
13 five different places in New York State
14 Civil Service law that defines what a
15 provisional employee is.
16 MS. ZWILLING: And I'm constrained to 12:22:45PM
17 point out, quite frankly, that this is the
18 second deposition we've had for purposes
19 into -- of inquiring into what various
20 aspects of Civil Service law mean. I'm not
21 suggesting I'm cutting you off at this
22 point, but certainly what the law is is
23 readily available in McKinney's, and it's
24 not what this witness is here for.
25 MR. GRAFF: Okay. The fact that a law 12:23:08PM
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1 CYNTHIA DISTEFANO
2 MR. GRAFF: That's my point. 12:24:=
02PM
3 MS. ZWILLING: She doesn't need to 12:24:03PM
4 identify it. It's incumbent upon you as the
5 attorney to familiarize yourself with it.
6 MR. NOVIKOFF: Do you have it here, 12:24:10PM
7 because I'm sure if you look under the index
8 here, I'm sure the index will provide you
9 the answers.
10 MS. ZWILLING: It's all right you 12:24:15PM
11 there. If you want, we can even make it
12 available to you.
13 MR. GRAFF: I'll ask the court 12:24:19PM
14 reporter to mark as Exhibit DiStefano 7 a
15 two-page document. I'll represent that this
16 is a printout from LexisNexis of New York
17 Civil Service Civil Service Law, Section 64.
18 MR. NOVIKOFF: So you've undertaken 12:24:35PM
19 research.
20 (Whereupon, LexisNexis of New York 12:24:38PM
21 civil service civil service law section 64
22 was marked as DiStefano Exhibit 7 for
23 identification, as of this date.)
24 MR. NOVIKOFF: Let the record reflect 12:25:15PM
25 that Mr. Graff has now identified as a
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1 CYNTHIA DISTEFANO
2 deposition exhibit Civil Service Law
3 Section 64, which is titled "Temporary
4 Appointments." And I believe the question
5 that precipitated this entire round of
6 discussion was to this witness, do you know
7 or is there any reference to temporary
8 appointments in the Civil Service law. And
9 I just then question why this wasn't shown
10 to this witness at the get go and then
11 proceed with any questions.
12 MR. GRAFF: We'll see how it goes. 12:25:44PM
13 BY MR. GRAFF: 12:25:51PM
14 **Q Please let me know when you're done. 12:25:52PM**
15 A I'm familiar with it. 12:25:57PM
16 MR. NOVIKOFF: Ask her a question. 12:25:58PM
17 And then if she needs to look at the statute
18 to answer the question, she can.
19 BY MR. GRAFF: 12:26:04PM
20 **Q Without focusing on the format of this 12:26:06PM**
21 **document, have you read this Section 64**
22 **before --**
23 A Yes. 12:26:12PM
24 **Q -- about temporary appointments? 12:26:12PM**
25 **Other than what's -- well, first of 12:26:15PM**
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1 CYNTHIA DISTEFANO
2 MR. GRAFF: Neither. 12:26:58PM
3 BY MR. GRAFF: 12:26:58PM
4 **Q I'm asking, are there any other 12:26:59PM**
5 **writings that are the source of guidelines or**
6 **standards for temporary appointments that are**
7 **used by the Suffolk County Department of Civil**
8 **Service?**
9 MR. NOVIKOFF: Objection. Form. 12:27:12PM
10 A We are bound to abide by New York 12:27:13PM
11 State law. This is the New York State law
12 pertaining to temporary appointments.
13 **Q And is there anything that supplements 12:27:22PM**
14 **or expands New York State law for temporary**
15 **appointments?**
16 MS. ZWILLING: Are you asking if there 12:27:28PM
17 are any Civil Service rules covering
18 temporary employment?
19 MR. GRAFF: Yes. 12:27:33PM
20 MR. NOVIKOFF: Then ask that question. 12:27:35PM
21 MS. ZWILLING: Yeah. 12:27:36PM
22 A We define temporary appointment in our 12:27:37PM
23 rules. It does not differ from this.
24 **Q And is that in the Civil Service 12:27:42PM**
25 **rules that --**
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1 CYNTHIA DISTEFANO
2 **all, is this the law on temporary appointments**
3 **that's applied by the Suffolk County Civil**
4 **Service Department?**
5 A Yes. 12:26:22PM
6 **Q Is there any other law on temporary 12:26:22PM**
7 **appointments that's applied by Suffolk County**
8 **Civil Service?**
9 MR. NOVIKOFF: As opposed to New York 12:26:28PM
10 State case law that has interpreted
11 Section 64.
12 MR. GRAFF: Yes. I'm asking about 12:26:31PM
13 rules or regulations, specifications,
14 guidelines.
15 MR. NOVIKOFF: Your question was was 12:26:36PM
16 there any other law that Suffolk County
17 Civil Service uses in connection with
18 temporary appointments. We have the
19 statute, and then we must realize that case
20 law has interpreted the statute. So when
21 you say is there any other law, are you
22 referring specifically to the statute or are
23 you referring to the statute as interpreted
24 by the state and federal courts that have
25 applied the statute?
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1 CYNTHIA DISTEFANO
2 A Yes, it is. 12:27:45PM
3 **Q And other than the rules in the Civil 12:27:48PM**
4 **Service rules, are there any other rules that**
5 **govern temporary appointments?**
6 MR. NOVIKOFF: Objection to form. 12:27:57PM
7 MS. ZWILLING: Objection. 12:27:58PM
8 A No. 12:27:59PM
9 MR. GRAFF: I'll note that this 12:28:04PM
10 document is dated 2009.
11 MR. NOVIKOFF: It says current as of 12:28:09PM
12 April 30th, 2009.
13 MS. ZWILLING: And it's, for purposes 12:28:12PM
14 of the record, not a record which we
15 produced. It is a document which apparently
16 you generated, Mr. Graff.
17 MR. GRAFF: Yes. I noted that when it 12:28:20PM
18 was introduced.
19 MR. NOVIKOFF: And please don't ask 12:28:23PM
20 her if this law has been supplemented since
21 April 30th, 2009, because that's something
22 you should've done research on.
23 MR. GRAFF: I wasn't going to ask her 12:28:34PM
24 that. And your ongoing commentaries is
25 disruptive.
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1 CYNTHIA DISTEFANO
2 MR. NOVIKOFF: I think it's helpful. 12:28:38PM
3 MR. GRAFF: I'm telling you it's 12:28:41PM
4 disruptive. I'm asking her questions.
5 MR. NOVIKOFF: I don't think so. 12:28:45PM
6 BY MR. GRAFF: 12:28:49PM
7 **Q Do you know if there was a previous 12:28:50PM**
8 **version of this Section 64 that was applied by**
9 **the department at any point from 2000 to the**
10 **present?**
11 MR. NOVIKOFF: Note my objection. 12:29:01PM
12 McKinney's, if you looked at it, would have
13 a section laws preceding this, and it would
14 give you an entire history of what preceded
15 this particular section.
16 MS. ZWILLING: As attorneys, we 12:29:12PM
17 probably don't know if there was any version
18 after 2000.
19 MR. GRAFF: If the witness doesn't 12:29:16PM
20 know --
21 MR. NOVIKOFF: Why are you asking this 12:29:18PM
22 witness that, when it's set forth in
23 McKinney's? Every statute in McKinney's,
24 underneath the body of the section says what
25 the prior laws were preceding this section.
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1 CYNTHIA DISTEFANO
2 apply whatever rules or regulations.
3 MR. GRAFF: I don't agree with that. 12:30:37PM
4 MR. NOVIKOFF: So I join in with 12:30:41PM
5 Ms. Zwilling's comment.
6 MS. ZWILLING: You can join in with 12:30:41PM
7 the comment. I don't know that it's an
8 objection. You made your point.
9 MR. NOVIKOFF: Maybe we should call 12:30:46PM
10 the judge up.
11 BY MR. GRAFF: 12:30:47PM
12 **Q Is there any training -- as I asked, 12:30:48PM**
13 **when there are new developments in the state**
14 **Civil Service law, how are those developments**
15 **communicated to personnel and what's --**
16 MS. ZWILLING: Is there someone in 12:31:06PM
17 this case, either plaintiff, defendant,
18 witness, what have you, that was a temporary
19 employee? I mean, this statute is so far
20 afield.
21 MR. GRAFF: I'm not asking only with 12:31:15PM
22 respect to Section 64. I'm asking the
23 broader question.
24 MS. ZWILLING: What is the -- why are 12:31:19PM
25 you inquiring about how we enforce
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1 CYNTHIA DISTEFANO
2 A We get McKinney's. We get pocket 12:29:33PM
3 amendments every year. When something arises,
4 we look up to see what is the current. To
5 detail how they changed over the years is not
6 possible for me to do.
7 **Q Okay. Thank you. That was really 12:29:47PM**
8 **what my question was focused on. I appreciate**
9 **your help in getting there.**
10 **When there are updates or revisions, 12:29:54PM**
11 **is there any training program or formalized**
12 **instruction within the department to provide**
13 **training to personnel analysts --**
14 MS. ZWILLING: Arie, is there some 12:30:08PM
15 sort of claim that someone misinterpreted a
16 provision of Civil Service law here?
17 Because I haven't heard such a claim made at
18 any time in the history of this case.
19 MR. NOVIKOFF: Either the Village of 12:30:18PM
20 Ocean Beach violated Civil Service law in
21 something they did pertaining to either
22 Mr. Hesse or any of the plaintiffs here or
23 any of the police officer or they didn't.
24 But there is no claim against Suffolk County
25 Civil Service Department for failure to
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1 CYNTHIA DISTEFANO
2 modifications in the law when there is
3 nothing in the case, no allegation related
4 to that? I mean, I think I've been
5 exceedingly patient.
6 MR. GRAFF: Number 7 on the fourth 12:31:38PM
7 page of the 30(B)(6) Notice asks about any
8 and all training provided by Suffolk County
9 Department of Civil Service to personnel
10 analysts, principal personnel analysts.
11 MS. ZWILLING: That it's in the 12:31:49PM
12 30(B)(6) Notice doesn't make it proper. I
13 certainly would have no objection to your
14 questions about training with respect to the
15 facts of this case, but the witness is not
16 here to give you an abstract dissertation on
17 the procedures of Suffolk County Civil
18 Service.
19 MR. GRAFF: I don't want to argue back 12:32:08PM
20 and forth. If you want to instruct the
21 witness not to answer the question, I will
22 move on.
23 MS. ZWILLING: I will at this time. 12:32:14PM
24 And please do move on. And if necessary,
25 I'm not saying that we can't take it up
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1 CYNTHIA DISTEFANO
2 later, but at this point I am going to ask
3 you to move on to another area.
4 MR. GRAFF: Okay. If we could just 12:32:32PM
5 mark that.
6 MS. ZWILLING: I mean, I can't help 12:32:32PM
7 but point out that at this pace we're not
8 going to get this done in the allotted seven
9 hours. This witness has a wealth of
10 information about the actual allegations in
11 this case, and I would think you would want
12 to focus on those things.
13 MR. GRAFF: I want to focus, 12:32:46PM
14 hopefully -- I should note, although it's
15 abundantly clear from the record, the
16 colloquy and commentary going on is impeding
17 progress.
18 MS. ZWILLING: I think I'm trying to 12:32:57PM
19 limit my commentary. In any event, you have
20 your seven hours, and after that, of course
21 she will not be back.
22 MR. NOVIKOFF: And it would be your 12:33:06PM
23 seven hours minus whatever colloquy.
24 MR. GRAFF: We'll deal with that if it 12:33:10PM
25 comes up. I'll include that observation on
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1 CYNTHIA DISTEFANO
2 law applied by the Suffolk County Department of
3 Civil Service.
4 MR. NOVIKOFF: You're kidding me, 12:34:54PM
5 right? That's your question?
6 MR. GRAFF: Yes. 12:34:57PM
7 A All Civil Service law is applied by 12:34:57PM
8 the Suffolk County Civil Service Department.
9 Q Do you recognize this? 12:35:02PM
10 A I do. 12:35:03PM
11 MS. ZWILLING: Are you asking her to 12:35:04PM
12 swear verbatim this is identical? We're all
13 attorneys, and I would venture to say if you
14 showed me any section from McKinney's, any
15 of the volumes, I wouldn't have the
16 slightest clue whether or not it was the law
17 as written.
18 MR. NOVIKOFF: Oh, God. 12:35:21PM
19 MS. ZWILLING: Maybe if you want to 12:35:31PM
20 ask counsel to stipulate that this is
21 Section 65.
22 MR. NOVIKOFF: And it comes from 65 of 12:35:40PM
23 the Civil Service Law.
24 BY MR. GRAFF: 12:35:41PM
25 Q Ms. DiStefano, in connection with the 12:35:41PM
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1 CYNTHIA DISTEFANO
2 that colloquy.
3 CD 8 is a multi-page document, I'll 12:33:21PM
4 represent a Lexis printout of Section 65
5 Civil Service Law, entitled "Provisional
6 Appointments."
7 (Whereupon, a Lexis printout of civil 12:33:47PM
8 service law section 65 titled provisional
9 appointments was marked as DiStefano Exhibit
10 8 for identification, as of this date.)
11 MS. ZWILLING: I just do want to note 12:34:16PM
12 for the record that, you know, prior to your
13 questioning the witness about the meaning of
14 Section 65 of the Civil Service law, the
15 witness has already testified rather
16 emphatically that there is no such thing as
17 a provisional police officer. So this one
18 would seem to have not the remotest
19 connection with this matter.
20 MR. GRAFF: Relevance, I don't need to 12:34:37PM
21 defend on the record of the deposition.
22 BY MR. GRAFF: 12:34:43PM
23 Q Ms. DiStefano, my only question on 12:34:43PM
24 this document is whether or not this Section 65
25 on provisional appointments is the Civil Service
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1 CYNTHIA DISTEFANO
2 eligibles lists that we have been talking about,
3 is that a terminology that you've used or are
4 familiar with in this context?
5 A Willing acceptors. 12:35:54PM
6 Q What is a willing acceptor? 12:35:55PM
7 A Someone who wants the particular job 12:35:57PM
8 that's offered.
9 Q And how is it determined whether the 12:36:01PM
10 individuals on the eligible list are willing
11 acceptors?
12 A They get canvassed. They get sent a 12:36:08PM
13 letter, are they interested or are they not
14 interested. And those who are interested then
15 constitute the list that has to be used. Those
16 are the willing acceptors.
17 Q And is a canvass letter sent to 12:36:21PM
18 everybody on the eligible list or is there some
19 score cutoff for who gets it?
20 A It's a reasonable determination, how 12:36:30PM
21 many you need to fill your positions. If we
22 have a police officer list of 25,000 people,
23 we're not going to send 25,000 letters.
24 Q And is that a determination made 12:36:42PM
25 internally in the Civil Service Department?
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1 CYNTHIA DISTEFANO
2 A It can be made by the appointing 12:36:45PM
3 authority. We will guide them if they ask us of
4 what score they need to go down to to get a
5 reasonable number of respondents.
6 Q And who actually sends off the canvass 12:36:56PM
7 letters? Is that a municipality or the Civil
8 Service Department?
9 A It's usually the municipality. 12:37:03PM
10 Sometimes we do it for them.
11 Q Ms. DiStefano, I know it wasn't set 12:37:21PM
12 out in our 30(B)(6) Notice, which is why I'm
13 going to ask. Have you read the complaint in
14 this lawsuit?
15 A Yes. 12:37:32PM
16 Q I'll note, I have available -- I'm not 12:37:40PM
17 necessarily going to mark it, but I can provide
18 it to you if it will refresh your recollection
19 on any issues or be helpful, Section --
20 MR. NOVIKOFF: You haven't established 12:37:50PM
21 that she has not had her recollection
22 refreshed.
23 MR. GRAFF: I said if it comes to 12:37:54PM
24 that. I just want to make the witness
25 aware.
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1 CYNTHIA DISTEFANO
2 ask.
3 MS. ZWILLING: Thank you. 12:38:52PM
4 BY MR. GRAFF: 12:38:52PM
5 Q Is it within the jurisdiction or scope 12:38:52PM
6 of authority of the Suffolk County Civil Service
7 Department to supplement or modify any aspect of
8 75B?
9 MS. ZWILLING: Objection. 12:39:05PM
10 That was not my objection. Maybe I 12:39:05PM
11 didn't make myself clear, so let me clarify
12 it. Your question presumes that Civil
13 Service in some way enforces or implements
14 that section of Civil Service law. The
15 foundation question I was hoping you would
16 ask was to what extent, if any, does Suffolk
17 County Civil Service implement or enforce
18 that section. Because if they -- certainly,
19 they can't enact rules or procedures with
20 respect to that to any greater extent than
21 it's their responsibility to enforce that.
22 MR. GRAFF: Okay. Word for word, if 12:39:45PM
23 Ms. DiStefano followed that question, I'm
24 not going to oppose that.
25 MS. ZWILLING: I'm not sure she did 12:39:53PM
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 12:37:58PM
3 Q I'm not trying to quiz your memory. 12:37:58PM
4 Section 75B, Retaliatory Action by 12:38:02PM
5 Public Employers, are you familiar with that
6 section?
7 A I've read it. I wouldn't say I'm 12:38:08PM
8 familiar, overly familiar with it.
9 Q Does Suffolk County Civil Service have 12:38:12PM
10 any rules, guidelines or specifications that
11 supplement or modify Section 75B?
12 MS. ZWILLING: Objection. Your 12:38:22PM
13 question presumes that Section 75 is
14 within -- implementing that is within their
15 jurisdiction. I think you need to establish
16 first the extent to which it is within their
17 jurisdiction, if any.
18 MR. GRAFF: Well, if the answer is 12:38:37PM
19 yes, then I can know that it's within the
20 jurisdiction. If the answer is no, I'll ask
21 a second question.
22 MS. ZWILLING: Would you kindly ask 12:38:44PM
23 that foundational question first.
24 MR. GRAFF: I'm not required to ask 12:38:47PM
25 foundational questions, but I will kindly
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1 CYNTHIA DISTEFANO
2 because I spoke quite a bit there, but why
3 don't you rephrase the question.
4 BY MR. GRAFF: 12:39:59PM
5 Q To what extent, if any, does the 12:39:59PM
6 Suffolk County Department of Civil Service
7 enforce or implement Section 75B?
8 A We have looked into county complaints 12:40:08PM
9 pertaining to whistle blowing. I'm not aware of
10 any involvement with non-county situations.
11 Q And when you say non-county 12:40:26PM
12 situations, you mean situations not involving
13 whistle blowing county employees?
14 A Yes. 12:40:34PM
15 Q Is the Suffolk County Department of 12:40:36PM
16 Civil Service required to, itself, comply with
17 Section 75B? Is it applicable to the conduct of
18 this department?
19 MS. ZWILLING: Objection. That calls 12:40:50PM
20 for a legal conclusion. The witness is not
21 an attorney. If you want to ask her what
22 they do, and I think you have already gotten
23 that testimony, the question is proper.
24 Obviously, any question about whether and to
25 what extent the law applies is not a proper
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1 CYNTHIA DISTEFANO
2 question to this witness.
3 MR. GRAFF: I don't know that I agree, 12:41:=
08PM
4 but I'll let that go.
5 MR. NOVIKOFF: Appreciate it. 12:41:11PM
6 BY MR. GRAFF: 12:41:12PM
7 **Q Does Suffolk County Civil Service 12:41:13PM**
8 **provide any information or guidance of any sort**
9 **to municipalities within the county regarding**
10 **any obligations that they may have under**
11 **Section 75B?**
12 A We would provide information about the 12:41:38PM
13 Civil Service protection afforded to a
14 particular person, whether or not that was
15 relative to 75B.
16 **Q What about an employee who is not -- 12:41:55PM**
17 **strike that. I can be more specific.**
18 **What about a part-time seasonal police 12:42:04PM**
19 **officer who does not have a permanent -- to the**
20 **extent that they do not have permanent**
21 **protection under the Civil Service law?**
22 MR. NOVIKOFF: Objection. What about 12:42:17PM
23 a part-time seasonal? Isn't it either
24 part-time or it's seasonal. I think
25 seasonal is defined in a certain manner as
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 12:43:51PM
3 **Q And Ms. DiStefano, you can certainly 12:43:51PM**
4 **take time to look at the document, if you want.**
5 **My questions are going to be on a very specific**
6 **section of the text that I can point you to.**
7 A Go ahead. 12:44:17PM
8 **Q On the second page, Number 2, (A) and 12:44:18PM**
9 **then (ii). Do you see the section I'm referring**
10 **to?**
11 A Yes. I want to put it together. 12:44:36PM
12 **Q Sure. 12:44:38PM**
13 A I have read that section. 12:44:57PM
14 **Q As far as the language within that 12:44:59PM**
15 **section, "reasonably believes to be true and**
16 **reasonably believes constitutes an improper**
17 **governmental action," do you have any**
18 **information as to how it is the reasonableness**
19 **of that belief is evaluated?**
20 MS. ZWILLING: Objection. 12:45:17PM
21 MR. NOVIKOFF: Objection. 12:45:17PM
22 MS. ZWILLING: I want to make it very 12:45:18PM
23 clear at this point, because, one, you're
24 asking the witness to interpret a statute,
25 which she can't do.
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1 CYNTHIA DISTEFANO
2 being two weeks before Memorial Day and two
3 weeks after Labor Day, and then there's
4 within the Civil Service law part-time
5 definitions. So I'm objecting to the form.
6 MR. GRAFF: Strike the form of that 12:42:36PM
7 question.
8 MS. ZWILLING: And, Arie, I'm also 12:42:39PM
9 constrained to point out that whistle
10 blowing is a broad category. There is the
11 whistle blowing of my boss mistreats
12 everybody who is working for him, and then
13 there is while I was going shopping after I
14 got off work, I saw my boss rob a bank. If
15 you see your boss rob a bank, I think we can
16 all agree that Civil Service would not have
17 any jurisdiction to deal with the commission
18 of the crime.
19 MR. GRAFF: Let me help narrow it 12:43:08PM
20 down.
21 Let me mark as CD 9 the actual text of 12:43:12PM
22 75B.
23 (Whereupon, Text of 75-b was marked as 12:43:20PM
24 DiStefano Exhibit 9 for identification, as
25 of this date.)
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1 CYNTHIA DISTEFANO
2 MR. NOVIKOFF: Right. 12:45:26PM
3 MS. ZWILLING: Moreover, the statute 12:45:27PM
4 pertains to the employer. It says so
5 explicitly. So I have two objections here.
6 One is you're asking the witness, who's not
7 an attorney, to interpret a legal statute.
8 And two, you're asking her to interpret a
9 statute which, by its language, applies to
10 some other entity other than the one she is
11 employed by. So I'm not going to permit her
12 to answer that.
13 MR. NOVIKOFF: And I'm going to go one 12:46:00PM
14 step further. And number three, you've just
15 asked this witness to opine on what case
16 law, I'm sure over the last half century,
17 has already discussed as to what the
18 interpretation of reasonability is within
19 the context of 75-B. So either you haven't
20 done your research or you have and you still
21 know that it's an improper question to ask
22 this witness.
23 MR. GRAFF: Right. I'm not asking the 12:46:23PM
24 witness to interpret or opine. I asked if
25 the witness had any information. To the
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1 CYNTHIA DISTEFANO
2 extent she knows about that, I'm asking that
3 she express that now.
4 MS. ZWILLING: Well, only an attorney 12:46:33PM
5 could interpret this. And to the extent any
6 attorney may have interpreted it for her,
7 that's privileged.
8 MR. NOVIKOFF: Do you want to call the 12:46:42PM
9 judge up on this one or mark it for a
10 ruling?
11 MS. ZWILLING: And quite frankly, what 12:46:46PM
12 her opinion of it may be is not going to
13 help you in any way.
14 MR. GRAFF: I didn't ask her for her 12:46:51PM
15 opinion.
16 BY MR. GRAFF: 12:46:54PM
17 **Q Have you had -- in the course of your 12:46:54PM**
18 **employment in any of your positions in Suffolk**
19 **County Civil Service, have you had any personal**
20 **involvement in a situation applying that**
21 **provision of 75B1?**
22 MR. NOVIKOFF: Objection. 12:47:09PM
23 MS. ZWILLING: Objection. 12:47:12PM
24 A No. 12:47:12PM
25 **Q Do you know whether any other employee 12:47:20PM**
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 12:48:14PM
3 **Q Earlier you had made reference to some 12:48:14PM**
4 **county issues regarding 75B. Do you recall what**
5 **I'm referring to?**
6 A Yes. 12:48:22PM
7 **Q And do you recall anything specific 12:48:23PM**
8 **about those issues that you referred to?**
9 MR. NOVIKOFF: Objection to form. 12:48:26PM
10 A I know our department investigated one 12:48:29PM
11 instance.
12 **Q Do you recall in substance what the 12:48:34PM**
13 **incident involved?**
14 MS. ZWILLING: Objection. I 12:48:37PM
15 absolutely cannot let the witness get into
16 any whistle -- investigations of whistle
17 blowing issues, particularly since she's
18 testified that this relates to the county
19 and not a municipality. There's an
20 investigatory privilege there. We could be
21 violating the rights of any number of people
22 were we to give out that information.
23 MR. GRAFF: Let's mark that. 12:48:58PM
24 MR. NOVIKOFF: And I'm going to be 12:49:00PM
25 making a motion for sanctions on this
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1 CYNTHIA DISTEFANO
2 **of Suffolk County Civil Service, specific**
3 **individual, has been involved in issues**
4 **involving the application of this provision?**
5 MR. NOVIKOFF: You're kidding me. 12:47:30PM
6 MS. ZWILLING: Objection. 12:47:31PM
7 MR. NOVIKOFF: Objection. 12:47:33PM
8 MS. ZWILLING: The objection now is 12:47:34PM
9 numerous, because you could -- your question
10 also inquires whether there has been any
11 whistle blowing incident within Civil
12 Service, within Suffolk County, within
13 multiple other jurisdictions within the
14 county.
15 MR. GRAFF: That's already the 12:47:51PM
16 witness's testimony.
17 MS. ZWILLING: I'm going to ask you to 12:47:54PM
18 clarify the question because, as asked, I
19 can't permit her to respond to it. I want
20 to make clear I'm not foreclosing you
21 entirely from this avenue of inquiry. If
22 you want to rephrase your question, perhaps
23 you can put it together in some permissible
24 fashion.
25 MR. GRAFF: Okay. 12:48:14PM
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1 CYNTHIA DISTEFANO
2 question as well.
3 MS. ZWILLING: I do want to make 12:49:07PM
4 clear, Mr. Graff, that if for some reason
5 you can have a particularized factual basis
6 for asking that question which relates
7 directly to the issues here, I might
8 reevaluate that. But if you're just asking
9 to find out what else is out there, I
10 obviously have to instruct the witness not
11 to answer because, among other things, I
12 can't allow her to give that information
13 that we may be breaking the law by giving.
14 MR. GRAFF: Let's just mark that. I 12:49:32PM
15 don't agree with your position, but I'll
16 move on.
17 MS. ZWILLING: Okay. Thank you. 12:49:36PM
18 BY MR. GRAFF: 12:49:37PM
19 **Q Do you know who in the department -- 12:49:38PM**
20 **and I'm not asking by name, what position the**
21 **person who led that investigation that you**
22 **referred to involving Section 75B, who that was?**
23 A Yes. 12:49:51PM
24 **Q And who was it? 12:49:51PM**
25 A Name or title? 12:49:55PM
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1 CYNTHIA DISTEFANO
2 MR. GRAFF: Do you have an objection 12:49:58PM
3 to the name?
4 MS. ZWILLING: Only that bit of 12:50:00PM
5 information, no. But I'm obviously going to
6 parse the questions here because I have to
7 be careful that nothing is going to be
8 disclosed in terms of anybody's privacy or
9 other law of privilege.
10 MR. GRAFF: Subject to my position, 12:50:15PM
11 which is that those don't apply in a federal
12 deposition, I will try to accommodate.
13 MS. ZWILLING: I fully understand 12:50:21PM
14 that, and I'm sure you're not interested in
15 situations that are entirely unrelated. On
16 the other hand, there obviously are
17 constraints on our ability to give out
18 information with respect to whistle blowing.
19 If you want the name, she can give you just
20 the name, yes.
21 A Christine Chayes, C-H-A-Y-E-S. 12:50:37PM
22 **Q What position? 12:50:42PM**
23 A Principal personnel analyst. 12:50:44PM
24 **Q What year did that investigation 12:50:51PM**
25 **commence?**
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1 CYNTHIA DISTEFANO
2 **Q And who do you know her to be? 12:51:44PM**
3 A She was a personnel analyst trainee 12:51:46PM
4 and a personnel analyst in the Civil Service
5 Department. She left us to go the probation
6 department.
7 **Q And were you ever her direct or 12:51:58PM**
8 **indirect supervisor?**
9 A Indirect, yes. 12:52:04PM
10 **Q What was the nature of that indirect 12:52:05PM**
11 **supervisory relationship?**
12 A Through the chain on down through the 12:52:09PM
13 principal personnel analyst, senior personnel
14 analyst.
15 **Q Is that the extent of the chain? 12:52:15PM**
16 A Yes. 12:52:16PM
17 **Q Did you ever have occasion to 12:52:23PM**
18 **supervise her work or any aspect of it directly?**
19 A I would call my supervision always 12:52:33PM
20 indirect through the principal personnel
21 analyst, but I was certainly involved in some of
22 it, yes.
23 **Q Who were the principal personnel 12:52:41PM**
24 **analysts who were the direct supervisors of**
25 **Ms. Sanchez?**
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1 CYNTHIA DISTEFANO
2 MS. ZWILLING: I'm going to object to 12:50:54PM
3 any questions regarding the investigation
4 itself at this time.
5 MR. GRAFF: Can I get the time frame 12:51:02PM
6 that we're talking about?
7 MS. ZWILLING: I'm going to say no, 12:51:05PM
8 because I don't know where that's going to
9 lead.
10 If you'd like during a break, I'm 12:51:10PM
11 happy to speak with Ms. DiStefano. Possibly
12 there's some information she might be able
13 to share with me that we may be able, along
14 with you, to make some evaluation of whether
15 or not this is something that can be gone
16 into.
17 BY MR. GRAFF: 12:51:29PM
18 **Q Who did Christine Chayes report to at 12:51:29PM**
19 **that time?**
20 A Alan Schneider. 12:51:33PM
21 **Q Was there anyone between Christine 12:51:35PM**
22 **Chayes and Alan Schneider?**
23 A No. 12:51:40PM
24 **Q Do you know who Allison Sanchez is? 12:51:41PM**
25 A Yes. 12:51:43PM
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1 CYNTHIA DISTEFANO
2 A Phillip Cohen. 12:52:48PM
3 **Q Was he the only one? 12:52:48PM**
4 A Yes. 12:52:50PM
5 **Q Do you recall having any conversations 12:52:51PM**
6 **with Phillip Cohen about Ms. Sanchez?**
7 MS. ZWILLING: Ever? 12:52:56PM
8 MR. GRAFF: Yeah. 12:52:57PM
9 A I had some conversations with all my 12:52:58PM
10 supervisors about their employees.
11 **Q Do you recall any specific 12:53:02PM**
12 **conversation between yourself and Mr. Cohen**
13 **regarding Ms. Sanchez?**
14 A I recall several specific 12:53:10PM
15 conversations.
16 **Q As far as you know, was Ms. Sanchez's 12:53:22PM**
17 **performance as a personnel analyst or personnel**
18 **analyst trainee satisfactory?**
19 A Yes. She successfully completed her 12:53:31PM
20 training and became a personnel analyst.
21 **Q And as a personnel analyst, did she 12:53:37PM**
22 **perform to the expectations of the Suffolk**
23 **County Department of Civil Service?**
24 A Yes, she did. 12:53:43PM
25 **Q Were you aware any of disciplinary 12:53:44PM**
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1 CYNTHIA DISTEFANO
2 action taken against her?
3 A No. 12:53:48PM
4 MR. NOVIKOFF: Objection to form. 12:53:48PM
5 BY MR. GRAFF: 12:53:49PM
6 Q When I say disciplinary action, what 12:53:49PM
7 do you understand me to refer to, if anything?
8 A A formal disciplinary action within 12:53:57PM
9 the parameters established by Suffolk County.
10 Q Do you know why Ms. Sanchez left for 12:54:22PM
11 the probation department?
12 A She wanted a law enforcement position. 12:54:25PM
13 Q Do you recall whether any of your 12:54:29PM
14 conversations with Mr. Cohen concerning
15 Ms. Sanchez also related to the Incorporated
16 Village of Ocean Beach specifically?
17 A Yes, they did. 12:54:40PM
18 Q How many such conversations do you 12:54:47PM
19 recall having?
20 A I have no idea. 12:54:48PM
21 Q What was the substance of the most 12:54:52PM
22 recent conversation of that nature? The last
23 time that you can remember having spoken with
24 Mr. Cohen regarding Ms. Sanchez and the
25 Incorporated Village of Ocean Beach, what did
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1 CYNTHIA DISTEFANO
2 to resolve the problems.
3 Q And in sum and substance, what do you 12:56:04PM
4 recall being discussed about how the department
5 was moving forward on those problems?
6 A It was moving forward very well. 12:56:11PM
7 Q And did you discuss this general 12:56:16PM
8 subject with Mr. Cohen on more than one
9 occasion?
10 A Yes. 12:56:21PM
11 Q Over what period of time did those 12:56:21PM
12 conversations take place?
13 A I don't know. 12:56:29PM
14 Q Do you know what year, in what year 12:56:29PM
15 you first had a conversation with Mr. Cohen
16 regarding the Incorporated Village of Ocean
17 Beach?
18 A No. 12:56:37PM
19 Q Do you recall whether you had such a 12:56:40PM
20 conversation before Ms. Sanchez was employed in
21 Suffolk County Civil Service?
22 A I'm sure I did. 12:56:49PM
23 Q And in substance, what did you discuss 12:56:55PM
24 with Mr. Cohen at that time, prior to
25 Ms. Sanchez's employment?
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1 CYNTHIA DISTEFANO
2 you discuss?
3 A I would say yesterday, in preparation 12:55:14PM
4 for this, we were looking through paperwork.
5 Q We'll come back to that. 12:55:20PM
6 What about during the period when 12:55:21PM
7 Ms. Sanchez was actively actually employed as a
8 personnel analyst?
9 MR. NOVIKOFF: What about it? Is that 12:55:30PM
10 a question or was the a preface to a
11 question?
12 MR. GRAFF: Taking a breath. It's a 12:55:34PM
13 preface.
14 BY MR. GRAFF: 12:55:36PM
15 Q Did you have any conversations with 12:55:36PM
16 Mr. Cohen concerning Ms. Sanchez and the
17 Incorporated Village of Ocean Beach that you can
18 recall during that period?
19 A We had conversations about the general 12:55:45PM
20 employment status of people in the Village of
21 Ocean Beach.
22 Q And was that people generally or 12:55:52PM
23 specific people in Ocean Beach?
24 A People who were perhaps not in 12:55:56PM
25 approved status and how we were moving forward
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1 CYNTHIA DISTEFANO
2 A I review all of the disapproved 12:57:02PM
3 employment in various jurisdictions regularly,
4 and I discuss with the analysts and the
5 supervisors responsible for that jurisdiction
6 what the situations are and how we're
7 progressing in resolving them.
8 Q And at the time when you discussed 12:57:22PM
9 that with Mr. Cohen before Ms. Sanchez was
10 employed, what was the status of the county's
11 actions regarding Ocean Beach reporting?
12 MS. ZWILLING: Objection as to form. 12:57:35PM
13 Status as --
14 MR. GRAFF: I may have missed a 12:57:38PM
15 question.
16 BY MR. GRAFF: 12:57:40PM
17 Q At the time when you discussed that 12:57:40PM
18 with Mr. Cohen before Ms. Sanchez was employed,
19 were there problems with reporting and
20 certification? Was that a subject of your
21 conversation as to Ocean Beach?
22 MR. NOVIKOFF: Objection to form. 12:57:57PM
23 A Anything that resulted in an 12:57:58PM
24 employee's status being disapproved was the
25 subject of the conversation.
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1 CYNTHIA DISTEFANO
2 **Q And was the county's efforts to remedy 12:58:06PM**
3 **the basis for those disapprovals something that**
4 **you discussed with Mr. Cohen?**
5 A Yes. 12:58:14PM
6 **Q And what was the status of those 12:58:14PM**
7 **efforts at the time that you discussed it with**
8 **Mr. Cohen before Ms. Sanchez was employed?**
9 A I just looked that we are on top of 12:58:22PM
10 it, that we have contacted whoever the
11 jurisdiction is, in this case, the village, and
12 told them what they need to do and remind them
13 if they haven't done it.
14 **Q And again, I'm at the period before 12:58:33PM**
15 **Ms. Sanchez started working. What was the**
16 **outcome of these efforts to correct the basis**
17 **for the disapprovals in Ocean Beach?**
18 MR. NOVIKOFF: Objection. I don't 12:58:47PM
19 know if you laid a foundation that an
20 outcome came into being before Ms. Sanchez
21 was hired.
22 A It's an ongoing process. 12:58:55PM
23 **Q Correct me, please, if I'm misstating. 12:59:05PM**
24 **I believe you said you would contact Ocean**
25 **Beach, remind them what they need to do to try**
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1 CYNTHIA DISTEFANO
2 witness discussed generally they did with
3 regard to Ocean Beach.
4 MR. GRAFF: That's my question now. 1:00:21PM
5 BY MR. GRAFF: 1:00:22PM
6 **Q Of those activities that you described 1:00:22PM**
7 **generally, what, if any, of those activities did**
8 **the county undertake with respect to Ocean Beach**
9 **prior to the year 2000?**
10 MS. ZWILLING: The county? I don't 1:00:33PM
11 think the county did anything.
12 MR. GRAFF: Department of Civil 1:00:37PM
13 Service.
14 A The Department of Civil Service sends 1:00:38PM
15 letters. We ask for payrolls if we don't have
16 them. Specifically, I don't know what and when
17 for Ocean Beach. So don't waste my time and
18 yours asking me that.
19 MS. ZWILLING: She's not going to know 1:00:54PM
20 the specifics. You do have some documents
21 which have been provided which might reflect
22 various actions. You already questioned
23 Allison Sanchez on them.
24 MR. GRAFF: I'm asking about an 1:01:05PM
25 earlier period of time.
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1 CYNTHIA DISTEFANO
2 **to correct the problem?**
3 A The analyst would normally do that. 12:59:14PM
4 **Q If that is not sufficient to correct 12:59:16PM**
5 **the problem, is there another -- anything else**
6 **that Suffolk County Civil Service could have**
7 **done to pursue the correction of that problem?**
8 MR. NOVIKOFF: Objection to form on 12:59:30PM
9 multiple levels.
10 MS. ZWILLING: Objection. 12:59:32PM
11 You can answer. 12:59:35PM
12 A We send letters. We make telephone 12:59:36PM
13 contacts. We arrange meetings.
14 **Q And what actions beyond calling and 12:59:49PM**
15 **reminding them has Suffolk County -- did Suffolk**
16 **County take prior to the year 2000 to correct**
17 **the basis for the disapprovals in Ocean Beach?**
18 A I don't remember anything out the 1:00:01PM
19 ordinary.
20 MR. NOVIKOFF: And I'm going to object 1:00:03PM
21 to the form of the question. You asked her
22 a general question, the question previously,
23 and then you took what her answer was and
24 applied it to Ocean Beach, and there was no
25 foundation that the activities that this
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1 CYNTHIA DISTEFANO
2 MS. ZWILLING: She's told you, she's 1:01:08PM
3 not going to know the specifics.
4 BY MR. GRAFF: 1:01:11PM
5 **Q Have you at any point yourself made 1:01:11PM**
6 **any phone calls or participated in any meetings**
7 **with any representative of Ocean Beach --**
8 MR. NOVIKOFF: Objection. Compound. 1:01:23PM
9 BY MR. GRAFF: 1:01:24PM
10 **Q -- in connection with efforts to 1:01:25PM**
11 **remedy the basis for disapprovals?**
12 MR. NOVIKOFF: Objection. I don't 1:01:40PM
13 even know if that's what she said the
14 problem at Ocean Beach was.
15 A During what time frame? 1:01:44PM
16 **Q Ever. 1:01:46PM**
17 MS. ZWILLING: That's very broad and 1:01:48PM
18 may relate to things and persons not
19 involved in this case.
20 BY MR. GRAFF: 1:01:52PM
21 **Q In the last -- have you been involved 1:01:53PM**
22 **in what I described on more than one occasion?**
23 MR. NOVIKOFF: "Involved" is very 1:02:04PM
24 broad.
25 MR. GRAFF: Has she made phone calls 1:02:07PM
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1 CYNTHIA DISTEFANO
2 herself or participated in meetings herself
3 with a representative of Ocean Beach as part
4 of efforts to correct the basis for
5 disapprovals on multiple occasions.
6 MR. NOVIKOFF: Objection to form. 1:02:19PM
7 A Not on multiple occasions, no. 1:02:21PM
8 **Q When was the occasion when you did 1:02:24PM**
9 **make such a telephone call or participate in**
10 **such a meeting?**
11 MR. NOVIKOFF: Objection to form. 1:02:31PM
12 A I was at one meeting in 2007 or '8. 1:02:32PM
13 I'd have to look.
14 **Q Where was that meeting held? 1:02:42PM**
15 A In our department. 1:02:44PM
16 **Q And who was present for that meeting? 1:02:45PM**
17 A The mayor, Mayor Loeffler. 1:02:47PM
18 **Q Was anyone other than yourself and 1:02:50PM**
19 **Mayor Loeffler present?**
20 A And Alan Schneider and their village's 1:02:54PM
21 attorney.
22 **Q Was anyone else present? 1:03:00PM**
23 A No. 1:03:02PM
24 **Q Was there an attorney from the county? 1:03:02PM**
25 A No, not at that one. 1:03:05PM
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1 CYNTHIA DISTEFANO
2 request. Whether it went to Alan Schneider or
3 came to me, I don't recall.
4 **Q And did anyone at some point 1:03:57PM**
5 **communicate to you why the village had**
6 **communicated to them that were requesting the**
7 **meeting?**
8 A Yes. 1:04:03PM
9 **Q And what was communicated to you on 1:04:04PM**
10 **that subject?**
11 A They were exploring the -- getting a 1:04:06PM
12 supervisory police position.
13 **Q Do you recall anything more specific 1:04:17PM**
14 **on that subject?**
15 A We told them what the Civil Service 1:04:23PM
16 possibilities would be.
17 **Q Do you recall what those possibilities 1:04:29PM**
18 **that you told them about were?**
19 A We could've given an open competitive 1:04:32PM
20 sergeant's exam. They could've sought a
21 transfer from another police department of a
22 sergeant. They could've reinstated someone who
23 had held sergeant status at some point.
24 **Q Do you know if the village ultimately 1:04:54PM**
25 **did any of those things? Was it ever**
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1 CYNTHIA DISTEFANO
2 **Q And why was that meeting held at that 1:03:08PM**
3 **time?**
4 MS. ZWILLING: Objection. She may not 1:03:10PM
5 know. You haven't established that she or
6 anyone at Civil Service requested the
7 meeting.
8 MR. NOVIKOFF: Exactly. 1:03:17PM
9 BY MR. GRAFF: 1:03:18PM
10 **Q Do you know why that meeting took 1:03:18PM**
11 **place at that time?**
12 A The village requested it. 1:03:21PM
13 **Q And do you know why the village 1:03:24PM**
14 **requested it?**
15 MS. ZWILLING: Objection. You can ask 1:03:27PM
16 if they communicated the reason to her.
17 BY MR. GRAFF: 1:03:30PM
18 **Q Was it communicated to you why the 1:03:31PM**
19 **village requested the meeting at that time?**
20 A Yes. 1:03:34PM
21 **Q Who communicated that to you? 1:03:35PM**
22 A I don't know. 1:03:44PM
23 **Q And what was communicated to you as 1:03:45PM**
24 **far as the reason for holding the meeting?**
25 A I know the village initiated the 1:03:49PM
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1 CYNTHIA DISTEFANO
2 **communicated to you?**
3 A To my knowledge, they have not done 1:04:59PM
4 that.
5 **Q And after that meeting, has Suffolk 1:05:01PM**
6 **County Civil Service taken any further action**
7 **with respect to the subject of the meeting?**
8 A Yes, we have. 1:05:10PM
9 **Q And what actions have been taken? 1:05:11PM**
10 A We have sent letters about the 1:05:14PM
11 supervisory situation with the police
12 department.
13 **Q How many such letters were sent? 1:05:19PM**
14 A I don't know. 1:05:21PM
15 **Q More than one? 1:05:21PM**
16 A I would think yes. 1:05:23PM
17 **Q More than five? 1:05:25PM**
18 A I don't know. 1:05:26PM
19 **Q Do you know who -- under whose name 1:05:28PM**
20 **would've drafted and signed those letters to**
21 **Ocean Beach?**
22 A No. I'd have to look. It would be 1:05:33PM
23 the personnel analyst or the principal.
24 **Q When is the last time you personally 1:05:39PM**
25 **obtained further information on the status of**
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1 **CYNTHIA DISTEFANO**
2 **Ocean Beach's handling of that issue subsequent**
3 **to the meeting?**
4 A I would think within the last few 1:05:52PM
5 months.
6 **Q And do you recall what information it 1:05:56PM**
7 **was that you became aware of at that time?**
8 A That was a letter that we sent. 1:06:01PM
9 **Q Do you know who that letter was 1:06:05PM**
10 **addressed to?**
11 A No. 1:06:08PM
12 **Q And so it's clear, was the issue that 1:06:11PM**
13 **Ocean Beach was employing a sergeant without**
14 **going through one of the possibilities that you**
15 **had proposed as being consistent with Civil**
16 **Service guidelines?**
17 MS. ZWILLING: Objection. 1:06:27PM
18 MR. NOVIKOFF: Objection to the form. 1:06:29PM
19 MS. ZWILLING: If he didn't go through 1:06:30PM
20 the procedures, then he wasn't a sergeant.
21 MR. GRAFF: I just want to be clear 1:06:34PM
22 that they weren't considering hiring a
23 sergeant and never did, but that there was a
24 sergeant who was hired and they needed to
25 correct that.
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1 **CYNTHIA DISTEFANO**
2 **individual?**
3 A There must have been. 1:07:41PM
4 **Q Do you recall who that individual was? 1:07:43PM**
5 A It would've been George Hesse. 1:07:44PM
6 **Q Were there any other specific 1:07:51PM**
7 **employees of Ocean Beach who were discussed in**
8 **that meeting with respect to Civil Service**
9 **status?**
10 A No. 1:07:58PM
11 **Q During that meeting, did -- 1:08:04PM**
12 MR. NOVIKOFF: The meeting with 1:08:12PM
13 Loeffler?
14 MR. GRAFF: The meeting with Loeffler. 1:08:14PM
15 BY MR. GRAFF: 1:08:15PM
16 **Q In the meeting with Loeffler, did you 1:08:15PM**
17 **or Mr. Schneider or anyone else on behalf of**
18 **Suffolk County Civil Service communicate to the**
19 **representatives from Ocean Beach that there**
20 **would be any consequences if they did not**
21 **correct the out of title issue with George**
22 **Hesse?**
23 MS. ZWILLING: Objection. 1:08:33PM
24 MR. NOVIKOFF: Objection to form. 1:08:34PM
25 MS. ZWILLING: There has been no 1:08:35PM
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1 **CYNTHIA DISTEFANO**
2 MR. CONNOLLY: Why don't we use the 1:06:42PM
3 term working out of title.
4 MR. NOVIKOFF: Why not ask the witness 1:06:45PM
5 what was the subject matter of the letter
6 that was sent to the village.
7 BY MR. GRAFF: 1:06:51PM
8 **Q Do you know? 1:06:51PM**
9 A I don't know specifically how he 1:06:53PM
10 worded it, so I'm not prepared to respond to
11 that.
12 **Q Do you know if generally it was on the 1:06:59PM**
13 **subject of an individual working out of title as**
14 **a sergeant?**
15 A I don't know whether it was specific 1:07:06PM
16 to an individual or whether it was specific to
17 the supervisory situation.
18 MR. NOVIKOFF: Why don't you ask her 1:07:14PM
19 if it was about George Hesse.
20 MR. GRAFF: If she doesn't know if 1:07:17PM
21 it's an individual, I don't need that
22 question.
23 BY MR. GRAFF: 1:07:21PM
24 **Q At the time of the actual in-person 1:07:22PM**
25 **meeting, was there discussion about any specific**
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1 **CYNTHIA DISTEFANO**
2 foundation that George Hesse was, in fact on
3 duty working out of title at the time of the
4 meeting.
5 BY MR. GRAFF: 1:08:46PM
6 **Q Do you know whether George Hesse was 1:08:46PM**
7 **working out of title at the time of the meeting?**
8 A No. 1:08:51PM
9 **Q No, he was not or no, you don't know? 1:08:52PM**
10 A I don't know at that specific moment. 1:08:55PM
11 **Q Do you know whether he's working out 1:08:58PM**
12 **of title today?**
13 A Do I know? 1:09:02PM
14 MR. NOVIKOFF: Does the witness have 1:09:06PM
15 personal knowledge? Is that the question?
16 BY MR. GRAFF: 1:09:11PM
17 **Q To the best of your knowledge and 1:09:11PM**
18 **information, is George Hesse working out of**
19 **title today?**
20 A Yes. 1:09:17PM
21 **Q As far as you know, has anybody from 1:09:25PM**
22 **Suffolk County Civil Service ever communicated**
23 **to any representative of Ocean Beach that there**
24 **would be any consequences for employing Sergeant**
25 **Hesse out of title and not correcting the**
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<p style="text-align: right;">Page 182</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 problem as guided by Civil Service Department?</p> <p>3 MS. ZWILLING: Objection. Your 1:09:48PM</p> <p>4 question presumes that there are</p> <p>5 consequences that Civil Service can impose</p> <p>6 for that.</p> <p>7 MR. GRAFF: I'm asking not that Civil 1:09:55PM</p> <p>8 Service would impose consequences, but that</p> <p>9 there were any consequences that could</p> <p>10 ensue.</p> <p>11 MS. ZWILLING: There are lots of 1:10:02PM</p> <p>12 consequences, but it may have nothing to do</p> <p>13 with Civil Service at all.</p> <p>14 MR. GRAFF: I'm asking if Civil 1:10:06PM</p> <p>15 Service communicated any such consequences.</p> <p>16 MS. ZWILLING: Why would they 1:10:09PM</p> <p>17 communicate those things? Like a taxpayer</p> <p>18 suit by people in the village or that the</p> <p>19 state could come in and do something about</p> <p>20 it? They may not even be aware of those</p> <p>21 things. If you want to ask are there</p> <p>22 consequences that Civil Service can impose</p> <p>23 and was that communicated, those questions</p> <p>24 are certainly proper. They can't speculate</p> <p>25 as to what other parties may or may not</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 183</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 choose to do.</p> <p>3 MR. NOVIKOFF: And I'm going to object 1:10:34PM</p> <p>4 again on the grounds that this is palpably</p> <p>5 and grossly irrelevant. You are asking this</p> <p>6 witness a question about an observation of</p> <p>7 whether or not Mr. Hesse is out of title in</p> <p>8 2007, which is after --</p> <p>9 MR. GRAFF: No, I asked at any point. 1:10:50PM</p> <p>10 MR. NOVIKOFF: Oh, no. I thought you 1:10:52PM</p> <p>11 were referring to information and belief</p> <p>12 concerning this 2007 meeting.</p> <p>13 MR. GRAFF: She wasn't sure if he was 1:10:58PM</p> <p>14 working out of title at that time. So I</p> <p>15 expanded the time to any time.</p> <p>16 MR. NOVIKOFF: I didn't quite get 1:11:05PM</p> <p>17 that. Okay, then fine. Still no relevancy</p> <p>18 of it to the lawsuit, but I don't think, if</p> <p>19 it's before 2006 it's grossly improper.</p> <p>20 MS. ZWILLING: May I ask you just 1:11:14PM</p> <p>21 this? Why don't you ask the witness if</p> <p>22 there are consequences that Civil Service</p> <p>23 can impose, if they communicated that to the</p> <p>24 village, and if you want to separately ask</p> <p>25 if they communicated to the village whether</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 184</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 there were other consequences not to be</p> <p>3 imposed by them.</p> <p>4 MR. GRAFF: I think that my original 1:11:36PM</p> <p>5 question was permissible. But to avoid</p> <p>6 colloquy, I'm going to proceed as you</p> <p>7 suggested.</p> <p>8 MS. ZWILLING: I appreciate that. 1:11:42PM</p> <p>9 Thank you.</p> <p>10 MR. NOVIKOFF: Or, more simply, what 1:11:43PM</p> <p>11 can the Civil Service Department --</p> <p>12 MR. GRAFF: Your suggestion is not 1:11:49PM</p> <p>13 appreciated.</p> <p>14 MR. NOVIKOFF: I think the simpler 1:11:49PM</p> <p>15 question is what, if anything, can the Civil</p> <p>16 Service Department do to enforce any</p> <p>17 violations of the Civil Service law.</p> <p>18 MR. GRAFF: You can ask that question 1:11:56PM</p> <p>19 when I'm done with my questions.</p> <p>20 MR. NOVIKOFF: Okay. Just trying to 1:11:59PM</p> <p>21 help you out, Arie.</p> <p>22 BY MR. GRAFF: 1:12:02PM</p> <p>23 Q Was it after communicated to Ocean 1:12:02PM</p> <p>24 Beach that there were any consequences that</p> <p>25 Civil Service could impose for continued</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 185</p> <p>1 CYNTHIA DISTEFANO</p> <p>2 employment of sergeant --</p> <p>3 MS. ZWILLING: I request that you 1:12:19PM</p> <p>4 first ask whether there are consequences.</p> <p>5 BY MR. GRAFF: 1:12:22PM</p> <p>6 Q Are there consequences that Civil 1:12:23PM</p> <p>7 Service can impose on a municipality for</p> <p>8 continuing to employ someone out of title?</p> <p>9 MR. NOVIKOFF: Wasn't that my 1:12:31PM</p> <p>10 question?</p> <p>11 A Yes, there are. 1:12:32PM</p> <p>12 Q What are those consequences? 1:12:33PM</p> <p>13 A We could initiate a lawsuit. We have 1:12:35PM</p> <p>14 not done that. A cease and desist of some sort</p> <p>15 via the county attorney's office.</p> <p>16 Q Has Suffolk County Department of Civil 1:12:48PM</p> <p>17 Service in the last approximately 10 years</p> <p>18 initiated such a lawsuit against any</p> <p>19 municipality?</p> <p>20 A Not to my knowledge. 1:12:56PM</p> <p>21 Q What about during the entire span of 1:12:57PM</p> <p>22 your employment with the county?</p> <p>23 A Not to my knowledge. 1:13:00PM</p> <p>24 Q Other than initiating a lawsuit, are 1:13:02PM</p> <p>25 there any other consequences that Suffolk County</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>

1 **CYNTHIA DISTEFANO**
2 **could impose?**
3 MS. ZWILLING: Objection with respect 1:13:07PM
4 to your use of the term "Suffolk County."
5 MR. GRAFF: Suffolk County Civil 1:13:14PM
6 Service.
7 A We remind people of the sections of 1:13:15PM
8 Civil Service law that make it a misdemeanor to
9 pay someone not properly certified, but that's
10 not something that we pursue. It's something
11 that a taxpayer could pursue. We remind them
12 that it could be a personal liability on their
13 part for the salary of people illegally
14 employed.
15 **Q In the context of Ocean Beach, 1:13:44PM**
16 **incorporated village of, you had testified**
17 **earlier that the village clerk and the mayor and**
18 **board of trustees were appointing authorities;**
19 **is that correct?**
20 MR. NOVIKOFF: Objection to form. 1:13:59PM
21 A No, I don't think the trustees are. I 1:14:00PM
22 think it's the village clerk and the mayor.
23 **Q When you stated a moment ago that it 1:14:04PM**
24 **could be a personal liability for monies paid to**
25 **the employee working out of title, who would**
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1 **CYNTHIA DISTEFANO**
2 MS. ZWILLING: And again, there's been 1:15:01PM
3 no testimony that at the time of the meeting
4 that George Hesse was in fact working out of
5 title. I don't think there's any dispute
6 that at some point he was, but we may not
7 have that timing here.
8 MR. GRAFF: She wasn't sure if he was 1:15:13PM
9 or wasn't. Now I'm asking was it
10 communicated to them at all at this meeting.
11 A This was not a threatening meeting. 1:15:20PM
12 This was a working meeting to solve a problem.
13 And after that meeting, they did hire a
14 temporary for the summer and he has left. So we
15 were not making threats at that meeting.
16 **Q And now that it's been determined that 1:15:36PM**
17 **George Hesse is currently working out of title,**
18 **has it been communicated, as far as you know, to**
19 **anyone at Ocean Beach that any of those**
20 **consequences could potentially ensue?**
21 MS. ZWILLING: Objection. 1:15:50PM
22 MR. NOVIKOFF: Objection. 1:15:51PM
23 MS. ZWILLING: Who has determined 1:15:51PM
24 that George Hesse is --
25 MR. GRAFF: She answered that he was. 1:15:53PM
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1 **CYNTHIA DISTEFANO**
2 **potentially be personally liable?**
3 MR. NOVIKOFF: Objection. Calls for a 1:14:18PM
4 legal conclusion.
5 A I'm not an attorney. 1:14:20PM
6 **Q To the extent that you know based on 1:14:22PM**
7 **your experience with Civil Service issues, can**
8 **you answer the question?**
9 MR. NOVIKOFF: Same problem. 1:14:28PM
10 A It's not a Civil Service issue in that 1:14:29PM
11 regard.
12 MS. ZWILLING: It's in McKinney 1:14:35PM
13 somewhere. I think we can all agree on
14 that.
15 MR. GRAFF: Yeah. 1:14:38PM
16 BY MR. GRAFF: 1:14:39PM
17 **Q During the meeting with the 1:14:40PM**
18 **representatives of Ocean Beach, was it**
19 **communicated at that time that it could be a**
20 **misdemeanor or there could be personal liability**
21 **or Civil Service could potentially initiate a**
22 **lawsuit?**
23 MR. NOVIKOFF: Objection to form. You 1:14:59PM
24 said meetings. The witness has only
25 testified to one meeting.
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1 **CYNTHIA DISTEFANO**
2 MR. NOVIKOFF: No. 1:15:55PM
3 MS. ZWILLING: No. 1:15:56PM
4 MR. NOVIKOFF: You asked if she had 1:15:56PM
5 any knowledge based upon any information and
6 belief. That's different.
7 BY MR. GRAFF: 1:16:01PM
8 **Q Now that there is a basis of 1:16:02PM**
9 **information and belief that that is the case, in**
10 **light of that, as far as you know, has it been**
11 **communicated to anyone?**
12 MR. NOVIKOFF: Objection. 1:16:11PM
13 A As a threat? 1:16:11PM
14 MR. NOVIKOFF: Objection to form. 1:16:12PM
15 MS. ZWILLING: I'm going to object 1:16:13PM
16 too, but the witness can answer the
17 question.
18 A We sent a letter. As I said, before, 1:16:15PM
19 I don't recall the exact terminology of the
20 letter. I don't think we were citing
21 Section 100 or whatever as a consequence.
22 MS. ZWILLING: The letters have been 1:16:25PM
23 produced to you, by the way.
24 MR. GRAFF: Yeah, I know. I'll get to 1:16:29PM
25 those.
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1 CYNTHIA DISTEFANO
2 (Whereupon, a discussion was held off 2:22:00PM
3 the record.)
4 (Whereupon, a lunch break was taken.) 2:22:00PM
5 MR. GRAFF: Please mark this. 2:22:53PM
6 (Whereupon, Signature authorization 2:22:54PM
7 form dated March 7, 2003 was marked as
8 DiStefano Exhibit 10 for identification, as
9 of test date.)
10 (Whereupon, Report of Personnel 2:24:20PM
11 Changes was marked as DiStefano Exhibit 11
12 for identification, as of this date.)
13 BY MR. GRAFF: 2:25:34PM
14 **Q Ms. DiStefano, during the lunch 2:25:44PM**
15 **recess, a moment ago, I asked the court reporter**
16 **to mark a document as CD 10. It's a signature**
17 **authorization form with two signature**
18 **authorization forms copied onto the single page**
19 **that you provided during the lunch break. I**
20 **have just a couple of questions.**
21 **In the bolded text that's in paragraph 2:26:05PM**
22 **format the top, "I hereby certify that I have**
23 **authorized the person listed below to sign**
24 **official documents such as payrolls, duty**
25 **statements and application for employment,**
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1 CYNTHIA DISTEFANO
2 **personnel changes and requests for eligible**
3 **lists for this jurisdiction for submission to**
4 **the Suffolk County Department of Civil Service,"**
5 **is this authorization a delegation by the**
6 **authorizing party of the authority to sign as an**
7 **appointing authority?**
8 MS. ZWILLING: Objection to form, to 2:26:41PM
9 your use of the word "delegation." The
10 question, as phrased, calls for legal
11 conclusion. But I think if you rephrase the
12 question, you'll get what you need without
13 that.
14 BY MR. GRAFF: 2:26:52PM
15 **Q Is this conferring authorization for 2:26:53PM**
16 **the designated person to sign documents as the**
17 **appointing authority on behalf of the village?**
18 A It's an authorization to sign just 2:27:04PM
19 those documents that are listed in that bold
20 type that pertain to reporting to Civil Service.
21 **Q I also have marked as CD 11 a one-page 2:27:13PM**
22 **document produced by Ocean Beach with a Bates**
23 **number in the middle of the document 267. At**
24 **the bottom right-hand corner of CD 11, there's a**
25 **box, signature of appointing authority, and it's**
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1 CYNTHIA DISTEFANO
2 **signed Maryann Minerva?**
3 A Yes. 2:27:38PM
4 **Q Is this a document that would have 2:27:38PM**
5 **been signed by her pursuant to the signature**
6 **authorization on the top half of CD 10?**
7 A Yes, personnel changes. 2:27:43PM
8 **Q Let's look specifically at CD 11. The 2:27:48PM**
9 **text above the signature in the bottom right,**
10 **"The above changes are hereby certified as being**
11 **in accordance with Civil Service requirements."**
12 A Uh-huh. Yes. 2:27:59PM
13 **Q Does the Civil Service Department give 2:28:01PM**
14 **any instruction or guidance to the appointing**
15 **authority with respect to whether the changes**
16 **are -- strike that. Let me start again.**
17 **Does an appointing authority in Ocean 2:28:26PM**
18 **Beach specifically receive any instruction or**
19 **guidance from the Civil Service Department as to**
20 **how to determine whether or not the changes that**
21 **they certify in a form such as CD 11 are in**
22 **accordance with Civil Service law?**
23 MR. NOVIKOFF: Objection. Form. 2:28:45PM
24 A Yes. 2:28:46PM
25 **Q And in what manner is that guidance 2:28:48PM**
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1 CYNTHIA DISTEFANO
2 **conveyed?**
3 A When there's a new person going to 2:28:54PM
4 handle their Civil Service transactions, we try
5 to meet with them and explain. We provide them
6 with a copy of the rules. We provide them with
7 the information they need to make various kinds
8 of appointments. And each time they send us
9 something, if there's a problem, we speak with
10 them, we address it with them. So it's an
11 ongoing process and it's initial training.
12 **Q And who specifically has been 2:29:21PM**
13 **responsible for the training, for conveying that**
14 **to the appointing authority in Ocean Beach, the**
15 **most recent time that such training or guidance**
16 **was conveyed?**
17 MR. NOVIKOFF: Objection to form. 2:29:35PM
18 A It's normally the analyst assigned to 2:29:36PM
19 the jurisdiction.
20 **Q And the most recent time that the 2:29:40PM**
21 **analyst assigned to the jurisdiction had to do**
22 **that with respect to Ocean Beach, who was that**
23 **analyst?**
24 A I don't know a specific instance, but 2:29:48PM
25 it's Phillip Cohen who was specifically assigned
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1 CYNTHIA DISTEFANO
2 as our liaison with Ocean Beach at this time.
3 **Q And who was the liaison assigned prior 2:29:57PM**
4 **to Phillip Cohen, if anyone?**
5 A I can't remember if there was anybody 2:30:01PM
6 between Allison and Phillip.
7 **Q And do you know in particular whether 2:30:07PM**
8 **Phillip Cohen actually has had occasion to**
9 **provide training or guidance to the appointing**
10 **authority in Ocean Beach?**
11 MR. NOVIKOFF: Objection to form. You 2:30:19PM
12 never talked about training. You asked
13 about guidance.
14 MR. GRAFF: Instruction or guidance. 2:30:24PM
15 A Training is offered. Not every 2:30:25PM
16 jurisdiction avails itself of that. But the
17 guidance, as I said, is ongoing with any
18 problems that arise as these transactions come
19 through. I can't point to any specifics with
20 Ocean Beach.
21 **Q Turning back to CD 10, the top half is 2:30:41PM**
22 **a signature authorization dated March 7, 2003.**
23 **The bottom half is a signature authorization**
24 **dated July 19th, 2006. During the period from**
25 **March 7th, 2003 to July 19th, 2006, who was**
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1 CYNTHIA DISTEFANO
2 2006?
3 **Q Yes. 2:31:58PM**
4 A This one, I had two copies for 2:32:04PM
5 March 7th 2003, and in my hurry to get them back
6 here, I may have copied -- missed the other copy
7 from March 7th that had Natalie Rogers'
8 signature on it, because obviously it should
9 have her signature in addition to just her name.
10 **Q Okay. 2:32:31PM**
11 A So presuming that's in order, it would 2:32:31PM
12 be one of the three signatures on there. Ethan
13 Repp, Nancy Balarezo or Natalie Rogers.
14 **Q And we had touched on this earlier 2:32:48PM**
15 **this morning. Are there any constraints on who**
16 **can be designated as an authorized alternative**
17 **who would be acceptable to Civil Service?**
18 A No. And it varies widely. It's 2:33:03PM
19 whoever the appointing authority decides to
20 offer that to.
21 **Q And can -- would Civil Service accept 2:33:09PM**
22 **a signature of anybody who has not been**
23 **authorized pursuant to a form like this?**
24 MR. NOVIKOFF: Objection to form. 2:33:19PM
25 A No. 2:33:20PM
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1 CYNTHIA DISTEFANO
2 **allowed in Ocean Beach to sign official**
3 **documents, such as CD 11, if you can determine**
4 **that from this document?**
5 MS. ZWILLING: Objection. 2:31:15PM
6 MR. NOVIKOFF: Objection to form. 2:31:16PM
7 MS. ZWILLING: Because this is the 2:31:17PM
8 Civil Service authorization. The village
9 may or may not have permitted individuals
10 authorized on here --
11 MR. GRAFF: I'm asking consistent with 2:31:25PM
12 Civil Service guidelines, regulations,
13 specifications, who from the perspective of
14 Civil Service --
15 MS. ZWILLING: Why don't you ask whose 2:31:33PM
16 signature would Civil Service accept.
17 MR. GRAFF: That's fine. 2:31:39PM
18 BY MR. GRAFF: 2:31:39PM
19 **Q Can you answer the question that way? 2:31:40PM**
20 A What were the time frames? 2:31:42PM
21 **Q From the date of the first 2:31:43PM**
22 **authorization to the second, whose signature**
23 **would Civil Service accept from Ocean Beach on**
24 **the items described in the paragraph above?**
25 A From March 7th, 2003 to July 18th, 2:31:54PM
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1 CYNTHIA DISTEFANO
2 **Q Turning to CD 11. Have you seen this 2:33:23PM**
3 **specific document before?**
4 A I don't know. 2:33:31PM
5 **Q Is this the CS-150? 2:33:32PM**
6 A Yes. 2:33:36PM
7 **Q And that's the report of personnel 2:33:37PM**
8 **changes?**
9 A Yes. 2:33:39PM
10 **Q Could you explain what its function 2:33:40PM**
11 **is?**
12 A Its function is to report personnel 2:33:43PM
13 changes, any action that a jurisdiction takes in
14 regard to an employee, hiring, firing,
15 dismissals, resignations, leave of absence,
16 salary increases, anything that happens to that
17 employee.
18 **Q And can you determine from CD 11 what 2:33:58PM**
19 **personnel change was being reported?**
20 A Two salary increases. 2:34:03PM
21 **Q And is the salary listed in the column 2:34:07PM**
22 **headed "Salary" the salary post the increase?**
23 **Is this the new salary that's being reported?**
24 A Yes. 2:34:19PM
25 **Q And is there anything on the document 2:34:19PM**
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CYNTHIA DISTEFANO

that indicates what the salary had been prior to this increase?

A No. 2:34:26PM

Q Is there any guideline, specification, rule, regulation by Civil Service with respect to the time period within which a change needs to -- of this nature needs to be reported on a CS-150?

A We say within a reasonable time. As soon as possible. 2:34:48PM

Q Is there anything -- 2:34:55PM

A There's nothing specific. 2:34:57PM

Q As a matter of practice at the Department of Civil Service, is there an informal but more specific cutoff time?

A No. 2:35:06PM

Q At the bottom left corner of the document there is some writing in a box. Based on the form of the document, who would've been or what entity or position or individual would've been responsible for making the handwritten notations there?

A The analyst assigned to that jurisdiction. 2:35:33PM

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CYNTHIA DISTEFANO

Q And can you determine from the writings who that analyst was? 2:35:36PM

A Yes. 2:35:40PM

Q Who? 2:35:40PM

A Allison Chester. 2:35:40PM

Q And there's a box checked for "approved as noted." Does that refer to something noted on this form or is that, perhaps, a notation somewhere else?

A It should refer to what's noted on this form. In this case, there isn't anything noted on there. 2:35:51PM

Q So is there a reason why approved as noted would be checked instead of approved? 2:35:58PM

MR. NOVIKOFF: Objection to form. 2:36:06PM

A It's not specified. 2:36:07PM

Q Is there any reason why approved as noted would be checked if there wasn't a notation somewhere? 2:36:09PM

MR. NOVIKOFF: Objection. Form. 2:36:16PM

A There might have been. I can't put myself in Allison's place and know why she did that. 2:36:17PM

Q Okay. As a matter of personnel 2:36:22PM

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CYNTHIA DISTEFANO

analyst functions, is there any reason why a personnel analyst should -- consistent with the form and the way the form is filled out, is approved as noted something that would be in writing or could it also be something noted in a telephone conversation?

MR. NOVIKOFF: Objection. Form. 2:36:42PM

A There should be something noted on the 150 itself to explain why that box is checked. 2:36:43PM

Q And then at the top right of the document it says "date prepared 6-15-05." 2:36:53PM

Underneath that, almost directly underneath there's a column that says "Effective Dates," and the two dates there are 6-1-05 and 6-1-05.

As CF-150s are used at Civil Service, is there a reason why the CS-150 would be prepared after the effective date of the change?

MS. ZWILLING: Objection. 2:37:28PM

MR. NOVIKOFF: Objection to form. 2:37:29PM

MS. ZWILLING: Civil Service doesn't prepare these documents. 2:37:31PM

MR. GRAFF: I understand Civil Service doesn't prepare it. I'm asking whether

Civil Service expects to receive these

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CYNTHIA DISTEFANO

documents in advance of an effective date or after an effective date.

A It varies. We don't expect. We just expect to get them. We don't expect to get them on a specific date. 2:37:45PM

Q And how does a personnel analyst, consistent with the expectations of the Department of Civil Service, make the determination as to whether the change is approved or disapproved? 2:37:57PM

MR. NOVIKOFF: Objection. Form. 2:38:14PM

MS. ZWILLING: Objection. That question calls for the subjective workings of someone's mind. If you want to ask her what the criteria are, that's would be acceptable. 2:38:15PM

BY MR. GRAFF: 2:38:26PM

Q Are there fixed criteria that are applied to determining whether to approve or disapprove a change noted on a CS-150? 2:38:26PM

A Civil Service law and Civil Service rules. 2:38:33PM

Q Are there any specific Civil Service laws or rules? 2:38:35PM

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1 **CYNTHIA DISTEFANO**
2 A There is a whole Civil Service book in 2:38:44PM
3 McKinney's that refers to Civil Service rules.
4 **Q Maybe my question -- maybe I 2:38:49PM**
5 **misunderstood.**
6 **When it's checked off as approved, 2:38:55PM**
7 **does that mean it's approved as being consistent**
8 **with all of the Civil Service rules?**
9 A Yes, it does. Anything applicable to 2:39:01PM
10 that particular action.
11 **Q And is there an investigation that 2:39:05PM**
12 **provides the basis for making the determination**
13 **that it's consistent?**
14 A That's what we do. 2:39:12PM
15 **Q And are there any criteria or 2:39:14PM**
16 **guidelines for how a personnel analyst should**
17 **carry out such an investigation?**
18 A The analyst should know the Civil 2:39:22PM
19 Service law and the Civil Service rules
20 applicable to employment. That is the function
21 of our department.
22 **Q And if a personnel analyst has a 2:39:33PM**
23 **question, is that something that they would**
24 **address with the senior personnel analyst?**
25 MR. NOVIKOFF: Objection. 2:39:43PM
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1 **CYNTHIA DISTEFANO**
2 A Not sure. 2:40:48PM
3 **Q Was there -- is there at any one time 2:40:49PM**
4 **a designated clerical?**
5 A Yes, there's always a designated 2:40:54PM
6 clerical.
7 **Q Do you know today who the designated 2:40:57PM**
8 **clerical is for Ocean Beach?**
9 A No. 2:41:00PM
10 **Q Does the designated clerical report to 2:41:00PM**
11 **the personnel analyst or is there an independent**
12 **a chain of command?**
13 A There is a clerical supervisor. 2:41:08PM
14 **Q Who does the clerical supervisor 2:41:11PM**
15 **report to?**
16 A Me. 2:41:14PM
17 **Q How many clerical positions of that 2:41:16PM**
18 **nature are there today?**
19 A Nine. 2:41:20PM
20 **Q And did that number fluctuate at all 2:41:20PM**
21 **between 2000 and the present?**
22 A Maybe by one. 2:41:26PM
23 **Q What are the requirements, if you 2:41:35PM**
24 **know, for obtaining the position of clerical**
25 **analyst in Suffolk County Civil Service?**
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1 **CYNTHIA DISTEFANO**
2 BY MR. GRAFF: 2:39:44PM
3 **Q The principal personnel analyst? 2:39:45PM**
4 **Excuse me.**
5 MR. NOVIKOFF: Objection. 2:39:49PM
6 A They could address it with anyone else 2:39:49PM
7 in the unit if they had a question.
8 **Q So they could confer with another 2:39:54PM**
9 **personnel analyst and figure it out among**
10 **themselves?**
11 MR. NOVIKOFF: Objection. 2:40:00PM
12 A Sometimes. 2:40:00PM
13 **Q Towards the top, there's again a 2:40:10PM**
14 **couple of handwritten notations next to the**
15 **printed change. Do those notations have any**
16 **specific meaning in the context of a CS-150?**
17 A There is a clerical person who enters 2:40:20PM
18 the actual transaction on the roster card, and
19 there's an analyst who then checks the
20 clerical's work and what the jurisdiction has
21 reported. So one check is the clerical's and
22 then the cross-check is the analyst's.
23 **Q And who was the clerical who would -- 2:40:39PM**
24 **who had responsibility over the Village of Ocean**
25 **Beach with respect to forms like these?**
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1 **CYNTHIA DISTEFANO**
2 A There is no clerical analyst. There 2:41:43PM
3 is a clerical support staff and there is a
4 professional staff of analysts. The clericals
5 do not make decisions about these things.
6 **Q In very, very small print at the 2:42:08PM**
7 **bottom of the document, it says, "Prior edition**
8 **may be used until supply is depleted." Is this**
9 **form that we're looking at the current edition**
10 **today?**
11 A Yes, it is. 2:42:24PM
12 **Q And do you know when the last revision 2:42:25PM**
13 **to the CS-150 was made?**
14 A If you look at the teeny, tiny print 2:42:30PM
15 to the far left, at the bottom you will see CS
16 form 150 (1086).
17 **Q And that's October 1986? 2:42:41PM**
18 A That's usually what 1086 refers to, 2:42:44PM
19 yes.
20 **Q Thank you. 2:42:49PM**
21 MR. NOVIKOFF: What date in October? 2:42:59PM
22 MS. ZWILLING: I think every county 2:43:03PM
23 form has the prior edition.
24 BY MR. GRAFF: 2:43:11PM
25 **Q Ms. DiStefano, when the document -- 2:43:11PM**
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CYNTHIA DISTEFANO
when the personnel analyst fills out that the document is approved, is that something that's sometimes referred to as certifying the payroll?

A No. 2:43:22PM

Q Is there something in the context of Civil Service known as certifying payroll?

A Yes. 2:43:28PM

Q Could you explain what that is, please?

A The jurisdiction has to submit its payroll to us, and then we match the information on the payroll with what they have reported via these CS-150s that constitute the roster card for the employee; and if they don't match, then we cannot certify that item on the payroll.

Q And is the payroll like the printout of the actual payments or is it a Civil Service form that's submitted as the payroll?

A No. It comes from the jurisdiction, and that varies also. We would like to see an official payroll that's generated -- that generated the paychecks, but sometimes they -- the tiny jurisdictions type us something.

Q And when it comes to certifying the TSG Reporting - Worldwide (877) 702-9580

CYNTHIA DISTEFANO
payroll, are there any other criteria other than ensuring that the amounts paid match the amounts that were approved on a CS-150?

MR. NOVIKOFF: Objection to form. 2:44:29PM

A The title has to match. The information on our roster has to be the same as they're carrying on their payroll.

Q And who -- what position in Civil Service has the authority or responsibility to certify a payroll when appropriate?

A The analyst reviews the payroll, and then it's stamped with Alan Schneider's signature.

Q And is it the same analyst who would have responsibility for that jurisdiction's CS-150?

A If that same analyst is still assigned to that jurisdiction at the time the payroll comes in, yes.

Q Is there any -- I'm trying to find the best terms for it.

Is the process of certifying personnel changes on the CS-150 and certifying payroll, is there any built-in mechanism to have a

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CYNTHIA DISTEFANO
cross-check by another personnel analyst or more senior position?

MR. NOVIKOFF: Objection to the phrase "built-in." I don't know what that means.

BY MR. GRAFF: 2:45:51PM

Q Is there an automatic cross-check that would take place as part of the process?

A There are cross-checks during training.

Q That is when a personnel analyst is a trainee?

A Yes. 2:46:00PM

Q And then after they become a permanent personnel analyst, are there any automatic cross-checks that would happen?

A Not automatic. There can be. 2:46:10PM

Q Are there any criteria pursuant to which a cross-check would be initiated?

MR. NOVIKOFF: Objection. Form. 2:46:19PM

A I think common sense, knowing how the analyst works. Knowing how difficult that particular jurisdiction is.

Q And who would have the authority or responsibility to initiate such a cross-check?

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CYNTHIA DISTEFANO

A Any supervisor. 2:46:39PM

Q So that could be a principal personnel analyst. Are there any other categories of supervisor that would --

A Senior personnel analyst or my position. 2:46:48PM

Q Are there any other positions in the county?

A In the county? 2:46:54PM

Q I'm sorry, in the Civil Service Department who would have the authority or responsibility to initiate a cross-check like that?

A The personnel director certainly could. 2:47:04PM

Q Are there any others? 2:47:06PM

A No. 2:47:07PM

Q Do personnel analysts receive annual written performance reviews?

A No. 2:47:21PM

Q Do personnel analysts ever receive written performance reviews?

MR. NOVIKOFF: Objection. In the history of the Civil Service Department?

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1 CYNTHIA DISTEFANO
2 A Only in conjunction with disciplinary 2:47:32PM
3 actions.
4 **Q Are there any positions in the Civil 2:47:35PM**
5 **Service Department for which annual performance**
6 **reviews in writing are conducted?**
7 A No. 2:47:44PM
8 **Q Are there any positions in the Civil 2:47:45PM**
9 **Service Department for which annual -- strike**
10 **that.**
11 **For which there would be written 2:47:51PM**
12 **performance reviews other than in the context of**
13 **discipline?**
14 A No. 2:47:57PM
15 **Q Let's take a step back on this. 2:48:17PM**
16 **To your knowledge, who are the 2:48:24PM**
17 **individual employees in Ocean Beach who have**
18 **interacted with personnel analysts in the Civil**
19 **Service Department with respect to Ocean Beach**
20 **Civil Service issues?**
21 A Maryann Minerva and George Hesse. 2:48:42PM
22 **Q Are those -- 2:48:47PM**
23 A That's to my personal knowledge. 2:48:49PM
24 **Q And do you have any information as to 2:48:52PM**
25 **other individuals who may have had such**
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1 CYNTHIA DISTEFANO
2 with personnel issues.
3 **Q Did the Civil Service Department have 2:49:58PM**
4 **any role or responsibilities at all in**
5 **connection with Ed Paradiso being on leave?**
6 MR. NOVIKOFF: Objection. 2:50:10PM
7 A I believe it's a comp case, so we 2:50:10PM
8 would not have any involvement with that.
9 **Q Would Ed Paradiso's leave be something 2:50:15PM**
10 **that would've been reported on a CS-150?**
11 A Workers' comp claims are not reported 2:50:21PM
12 to us.
13 **Q When a person is on a workers' comp 2:50:28PM**
14 **leave, do they still hold the position and**
15 **permanent -- let me rephrase.**
16 **In the context of a permanent 2:50:40PM**
17 **competitive class position at Ocean Beach, does**
18 **an employee who goes on a workers' comp leave,**
19 **retain their rights and protections in that**
20 **position?**
21 MS. ZWILLING: Objection. 2:50:53PM
22 MR. NOVIKOFF: Objection to form. 2:50:54PM
23 MS. ZWILLING: And I'm going to have 2:50:55PM
24 to object to that on the basis that it calls
25 for a legal conclusion. The problem with
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1 CYNTHIA DISTEFANO
2 **interactions?**
3 MR. NOVIKOFF: Objection. 2:49:01PM
4 MR. GRAFF: Personal knowledge, 2:49:04PM
5 sometimes I'm not sure exactly what that
6 refers to.
7 MR. NOVIKOFF: Why don't you ask her 2:49:07PM
8 the basis of her knowledge that Mr. Hesse
9 and Ms. Minerva interacted.
10 MR. GRAFF: Okay. 2:49:16PM
11 A In speaking with the people who work 2:49:18PM
12 with, I spoke with Maryann Minerva, I spoke with
13 George Hesse. I've seen some of the
14 correspondence.
15 **Q Based on those or other sources of 2:49:30PM**
16 **information, have any other names been**
17 **referenced that you can think of?**
18 A The mayor occasionally, but I don't 2:49:35PM
19 know if he gets involved with the nitty-gritty.
20 I would doubt it.
21 **Q What about Catherine Spies? 2:49:41PM**
22 A Don't know that name. 2:49:43PM
23 **Q What about Edward Paradiso? 2:49:45PM**
24 A He has been on leave for a long time, 2:49:47PM
25 so I have not heard him mentioned in conjunction
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1 CYNTHIA DISTEFANO
2 the question is there may be lots of rights
3 and interests in protection that go with the
4 position, and this witness, not being an
5 attorney, may not be familiar with the
6 panoply of that. However, if you want to
7 break it down with respect to specific
8 aspects of the position, such as the title,
9 permanent status, is salary repaid, do they
10 maintain sick time or seniority, she may be
11 able to answer with respect to individual
12 aspects of the position. I would also
13 imagine that the answer differs between
14 aspects. So you would probably want to know
15 the individual answers.
16 MR. GRAFF: Okay. 2:51:43PM
17 BY MR. GRAFF: 2:51:44PM
18 **Q Specifically on Ed Paradiso, if he's 2:51:44PM**
19 **on a workers' comp leave, does he maintain his**
20 **Civil Service title of police sergeant?**
21 A He would, because they don't report 2:51:53PM
22 the leave to us. So if we looked at the roster
23 card, he looks like an active police sergeant,
24 so he maintains all his competitive rights.
25 **Q Does anything change with respect to 2:52:05PM**
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1 **CYNTHIA DISTEFANO**
2 **Civil Service status of Ed Paradiso as a result**
3 **of his being on the workers' comp leave?**
4 A Not until an action taken by the 2:52:13PM
5 village changes his status.
6 **Q As far as you know, between 2000 and 2:52:20PM**
7 **2006, who were the individuals who had hire and**
8 **fire authority with respect to police officers**
9 **in Ocean Beach?**
10 A I would think it was the mayor. 2:52:35PM
11 **Q Would there be anyone else? 2:52:38PM**
12 A No. 2:52:39PM
13 **Q Would Ed Paradiso have hire and fire 2:52:40PM**
14 **authority?**
15 A No. 2:52:44PM
16 **Q Would George Hesse have hire and fire 2:52:45PM**
17 **authority?**
18 A No. 2:52:47PM
19 MR. NOVIKOFF: And this is also under 2:52:50PM
20 Civil Service law?
21 MS. ZWILLING: Right. She can't speak 2:52:54PM
22 to the internal workings --
23 THE WITNESS: What the village did, I 2:52:58PM
24 don't know, but the appointing authority for
25 the village is the mayor.
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1 **CYNTHIA DISTEFANO**
2 MR. NOVIKOFF: I'm going to object now 2:54:11PM
3 to the form of the question.
4 I would've thought the comments 2:54:13PM
5 would've made it clear that the phrase
6 "hiring and firing authority" is not
7 necessarily appropriate in Civil Service
8 context.
9 MR. GRAFF: I'm asking if it is. 2:54:24PM
10 MS. ZWILLING: The further issue with 2:54:26PM
11 the question, Arie, if you want to ask if
12 any of the Civil Service rules relate,
13 certainly that's a proper question. Once
14 you get into the Civil Service law, not only
15 are you asking her for a legal
16 interpretation, but there are aspects of
17 that law which may bind the individual
18 municipality but are outside of the
19 jurisdiction of Civil Service to enforce.
20 MR. GRAFF: I should clarify. Within 2:54:53PM
21 the jurisdiction of Civil Service in Suffolk
22 County to enforce.
23 MS. ZWILLING: Well, then I'm going to 2:54:59PM
24 ask you to limit it to the Civil Service
25 rules as opposed to Civil Service law,
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1 **CYNTHIA DISTEFANO**
2 MR. NOVIKOFF: Nice try, though. 2:53:04PM
3 BY MR. GRAFF: 2:53:09PM
4 **Q Does a person who's authorized as an 2:53:10PM**
5 **alternative on a form like CD 10 have the hire**
6 **or fire powers of the appointing authority?**
7 MS. ZWILLING: Objection. 2:53:21PM
8 Arie, the question -- the hiring and 2:53:22PM
9 firing authority is internal to the village.
10 The documents relate to who can sign off on
11 the report to Civil Service. That may or
12 may not be the same person as the village
13 authorizes to make its decision.
14 MR. GRAFF: Okay. 2:53:40PM
15 MS. ZWILLING: We don't have any 2:53:41PM
16 control over who the village makes into a
17 decision maker.
18 BY MR. GRAFF: 2:53:48PM
19 **Q Other than requiring that a person who 2:53:49PM**
20 **signs off on a form like this needs to be the**
21 **appointing authority or an authorized**
22 **alternative, are there any other Civil Service**
23 **specifications, guidelines, rules, regulations**
24 **that would bear on who has hire and fire**
25 **authority in Ocean Beach for police officers?**
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1 **CYNTHIA DISTEFANO**
2 because, again, the witness can't interpret
3 Civil Service law.
4 MR. GRAFF: Sure. 2:55:06PM
5 MS. ZWILLING: If you want to ask her 2:55:06PM
6 with respect to any sections of Civil
7 Service law that Civil Service is enforcing,
8 fine, but I can't allow her, obviously, to
9 speak about what aspects of the Civil
10 Service law may bind the village. She's not
11 a witness who can give that testimony.
12 MR. GRAFF: I understand what you're 2:55:26PM
13 saying.
14 MS. ZWILLING: It's a phrasing 2:55:30PM
15 objection. If you split up the question,
16 there's probably no objection.
17 BY MR. GRAFF: 2:55:32PM
18 **Q The Civil Service rules that you 2:55:33PM**
19 **provided me with a copy during lunch, is there a**
20 **more formal title for that document?**
21 A No. That is the formal title. 2:55:42PM
22 **Q The civil Service rules? 2:55:43PM**
23 A Yes. 2:55:46PM
24 **Q Are there any Civil Service rules that 2:55:46PM**
25 **bear on who has hire and fire authority with**
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1 **CYNTHIA DISTEFANO**
2 **respect to police officers in Ocean Beach?**
3 MR. NOVIKOFF: Objection to the form 2:55:58PM
4 of the question.
5 A I don't know if we define appointing 2:55:59PM
6 authority in there, but that would be the only
7 place if it's anywhere.
8 **Q What about in any Civil Service 2:56:06PM**
9 **manuals?**
10 A We deal with appointing authorities. 2:56:09PM
11 We don't list titles that that appointing
12 authority can hire or fire.
13 **Q On CD 10, we don't even necessarily 2:56:25PM**
14 **have to look, but if the context helps. The**
15 **title of Nancy J. Balarezo is village**
16 **clerk/treasurer.**
17 A Yes. 2:56:39PM
18 **Q Is the village clerk/treasurer a Civil 2:56:39PM**
19 **Service classified -- classification for a**
20 **position?**
21 A Yes, it is. 2:56:46PM
22 **Q And is there a Civil Service -- are 2:56:47PM**
23 **there separate Civil Service a classifications**
24 **for the position village clerk and treasurer or**
25 **are those one single position?**
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1 **CYNTHIA DISTEFANO**
2 A There are three titles, a village 2:56:59PM
3 clerk, a village treasurer and a village
4 clerk/treasurer. If a village opts to use the
5 combined titles, they don't get to use the other
6 two.
7 **Q I see. And are the combined titles, 2:57:12PM**
8 **is that a combination of everything that would**
9 **apply in the two separate titles?**
10 A Yes. It's a money saving. If they 2:57:20PM
11 don't want to use two people, they can have one
12 who combines two official functions.
13 **Q What about village administrator, is 2:57:29PM**
14 **that a Civil Service classification?**
15 A Yes, it is. 2:57:34PM
16 **Q What are the duties of a village 2:57:35PM**
17 **administrator?**
18 A It's the business manager for the 2:57:37PM
19 village.
20 **Q Is there a Civil Service class -- 2:57:44PM**
21 **withdrawn.**
22 MR. GRAFF: I'm going to ask the court 2:58:01PM
23 reporter to please mark as Exhibit CD 12 a
24 one-page document without Bates number.
25 (Whereupon, Suffolk County Department 2:58:13PM
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1 **CYNTHIA DISTEFANO**
2 of Civil Service Certification of Eligibles
3 was marked as DiStefano Exhibit 12 for
4 identification, as of this date.)
5 BY MR. GRAFF: 2:59:00PM
6 **Q Ms. DiStefano, if you could just let 2:59:01PM**
7 **me know when you've had a chance to look it**
8 **over. (Handing.)**
9 A (Witness complies.) Okay, I've seen 2:59:08PM
10 it. I've read it.
11 **Q Have you, prior to my handing it to 2:59:18PM**
12 **you, seen this specific page before?**
13 A I don't know. 2:59:26PM
14 **Q Towards the top, there's sort of a box 2:59:33PM**
15 **with text in capital letters.**
16 **Do you see that? 2:59:38PM**
17 A Yes. 2:59:39PM
18 **Q At the line on top of it, right above 2:59:40PM**
19 **that, there's a line that's also in capitals.**
20 **The first thing it says there is "village list."**
21 A Yes. 2:59:48PM
22 **Q Does that mean something in particular 2:59:48PM**
23 **in this context?**
24 A It means it's a residents list for the 2:59:55PM
25 Village of Ocean Beach.
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1 **CYNTHIA DISTEFANO**
2 **Q And then over next to that is the word 3:00:02PM**
3 **"permanent." Does that mean something in this**
4 **context?**
5 A It's a permanent vacancy, not a 3:00:08PM
6 contingent permanent vacancy.
7 **Q And then next to that it says "list 3:00:14PM**
8 **not pre-canvassed." What does that mean in this**
9 **context?**
10 A It means that the Civil Service 3:00:21PM
11 Department did not do a canvass of the
12 candidates before certifying the list to the
13 village.
14 **Q And how does that relate to the text 3:00:29PM**
15 **underneath that states, "The candidates listed**
16 **below have been canvassed by the Department of**
17 **Civil Service" and continues from there?**
18 A That would be applicable if it did not 3:00:44PM
19 say right above that that the list had not been
20 pre-canvassed.
21 **Q So that in this particular page, that 3:00:53PM**
22 **text does not apply?**
23 A That's correct. 3:00:56PM
24 **Q And can you tell from this document 3:01:02PM**
25 **what -- strike that.**
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1 CYNTHIA DISTEFANO
2 The names listed here, underneath each 3:01:15PM
3 of them it looks like there's three asterisks,
4 the word "pending item," three asterisks and
5 then some more text. Do you see what I'm
6 referring to?
7 A Yes. 3:01:30PM
8 Q Looking at the first one, Trosco, 3:01:30PM
9 Paul, the pending are med, psych, agility and
10 polygraph.
11 A Yes. 3:01:42PM
12 Q What does "pending" mean in this 3:01:42PM
13 context?
14 A It means that either haven't been 3:01:45PM
15 completed or we haven't gotten the results yet.
16 Q And on this certification of eligibles 3:01:50PM
17 form, does the designation "pending item" have
18 any impact on whether the village can hire the
19 individual for whom an item is pending?
20 MR. NOVIKOFF: Objection. Form. 3:02:08PM
21 A They can't be appointed until those 3:02:10PM
22 items have all been -- until those have been
23 passed.
24 Q And is there a form on which notice 3:02:16PM
25 would be given to the village that the items in
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1 CYNTHIA DISTEFANO
2 Q So there wouldn't be like another 3:03:17PM
3 certification of eligibles reissued?
4 A No. 3:03:21PM
5 Q How does the rule of three apply in 3:03:23PM
6 the context of lists like this where there's
7 pending items for each person?
8 I can be more specific. Say the 3:03:34PM
9 person ranked Number 5, Brian Butler, was the
10 first to complete the pending items. Could he
11 then be immediately hired?
12 A No. 3:03:47PM
13 Q Could you explain how the rule of 3:03:50PM
14 these plays out in the context of a list of
15 pending items?
16 A Everybody has to complete those items. 3:03:55PM
17 If anybody fails those items, then they can be
18 bypassed. Then they don't appear on the cert
19 anymore.
20 Q Okay. There's one person listed in 3:04:09PM
21 position one and then looks like a tie for
22 position two?
23 A Yes. 3:04:17PM
24 Q Could the person then listed at 3:04:19PM
25 position four ever be hired in compliance with
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1 CYNTHIA DISTEFANO
2 question have been passed?
3 MS. ZWILLING: Objection. Your 3:02:26PM
4 question assumes that we have that
5 information and pass it along to the
6 village. You haven't determined how that
7 information flows.
8 MR. GRAFF: Let me back up. 3:02:32PM
9 BY MR. GRAFF: 3:02:33PM
10 Q Do you know what the source or basis 3:02:35PM
11 for the statement "pending item, med, psych,
12 agility, polygraph" on this form is?
13 A We maintain a record of who has passed 3:02:45PM
14 those tests. So if they had, we would remove
15 the pending from the list certification.
16 Q And how would you know they had passed 3:02:54PM
17 it?
18 A We keep records in our examinations 3:02:57PM
19 division and certifications division.
20 Q And would -- how would it be 3:03:02PM
21 communicated to the village that those items
22 were no longer pending if they were completed?
23 MR. NOVIKOFF: Objection to form. 3:03:12PM
24 A It could be something in writing. It 3:03:14PM
25 could be a telephone call.
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1 CYNTHIA DISTEFANO
2 Civil Service regulations, guidelines,
3 specifications if persons 12 and two still had
4 pending items?
5 A They would all have to have completed 3:04:36PM
6 those items before this cert could be acted
7 upon.
8 Q And what if positions 12 and two 3:04:42PM
9 completed the items, would they still have to
10 wait for positions four and five?
11 A No, because they're immediately 3:04:50PM
12 reachable.
13 Q Is there any amount of time after 3:04:52PM
14 which position four would no longer have to wait
15 for one, two and two to complete the pending
16 items?
17 MR. NOVIKOFF: Objection. Form. 3:05:04PM
18 A I don't understand your question. 3:05:05PM
19 Q Well, is the person in position four 3:05:06PM
20 forever precluded from -- let me ask another
21 way.
22 Do the people in position one, two and 3:05:14PM
23 two ever lose that position if they don't,
24 within some amount of time, complete the pending
25 items?
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1 **CYNTHIA DISTEFANO**
2 A They only lose their position if they 3:05:25PM
3 fail one of the pending items.
4 **Q So they can remain on a certification 3:05:30PM**
5 **of eligibles until this certification of**
6 **eligibles itself expires?**
7 A Yes. And there is an expiration date 3:05:39PM
8 on the top.
9 **Q What is the date? 3:05:43PM**
10 A August 14th, 2006. 3:05:44PM
11 **Q Is it -- 3:05:45PM**
12 MR. NOVIKOFF: Is that where it says 3:05:48PM
13 "expiration date"?
14 THE WITNESS: Yes. 3:05:51PM
15 BY MR. GRAFF: 3:05:52PM
16 **Q The number above the date June 15th, 3:05:52PM**
17 **2006, do you know what that is?**
18 A Yes. It's the year and it's the 3:05:58PM
19 clerical person in the certifications unit that
20 processed this, and each year each clerical
21 person in there sequentially numbers
22 certifications they issue. So in 2006 Theresa
23 Albano, TA, issued this as her 355th
24 certification.
25 **Q What about just over to the left in 3:06:22PM**
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1 **CYNTHIA DISTEFANO**
2 **times that an individual can take the written**
3 **test for the position of police officer?**
4 A Just his age. 3:07:55PM
5 **Q What about position of police 3:07:57PM**
6 **sergeant?**
7 A A limit to the number of times, no. 3:08:01PM
8 Pay your \$100, we'll test you forever.
9 MS. ZWILLING: Do we know what the 3:08:10PM
10 record number of times to take the test is?
11 THE WITNESS: I have a guess. 3:08:14PM
12 MS. ZWILLING: People take and take 3:08:15PM
13 and retake these tests.
14 BY MR. GRAFF: 3:08:16PM
15 **Q On a certification of eligibles, does 3:08:16PM**
16 **anything indicate what number attempt at the**
17 **test is reflected in the total score here?**
18 A No. 3:08:25PM
19 **Q A little further over, there's the 3:08:33PM**
20 **heading "Action Code."**
21 A Yes. 3:08:36PM
22 **Q What does that mean in this context? 3:08:36PM**
23 A A, appointed. There's a key down at 3:08:38PM
24 the bottom. Action code legend.
25 **Q I see. And the effective date? 3:08:44PM**
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1 **CYNTHIA DISTEFANO**
2 **bold for the position of pound sign and then a**
3 **string of numbers, do you know what those**
4 **numbers refer to?**
5 A That's the list number. List was 3:06:34PM
6 established in 2003. 5002 is the specification
7 number for the police department.
8 **Q And police officer OC? 3:06:47PM**
9 A Open competitive. 3:06:51PM
10 **Q How many positions of open competitive 3:06:58PM**
11 **police officers have been established through**
12 **Civil Service for the Village of Ocean Beach?**
13 A I'd have to look at their position 3:07:05PM
14 control.
15 **Q The total score indicated for each 3:07:18PM**
16 **applicant, do you see where I'm referring to?**
17 A Yes. 3:07:24PM
18 **Q What does that refer to? 3:07:24PM**
19 A The written test. 3:07:26PM
20 **Q Is there anything on that document 3:07:31PM**
21 **that indicates the date of that written test?**
22 A Yes -- oh, not the date of the test, 3:07:38PM
23 no. It indicates the date the list was
24 established.
25 **Q Is there a limit to the number of 3:07:47PM**
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1 **CYNTHIA DISTEFANO**
2 A Yes. 3:08:50PM
3 **Q That's the date when they were 3:08:51PM**
4 **actually appointed and hired to work in that**
5 **position?**
6 A Yes. 3:08:55PM
7 **Q So based on this document -- I know 3:09:00PM**
8 **you said you'd have to check your records. But**
9 **based on this record, there's at least two**
10 **police officer positions open competitive that**
11 **have been established to pursuant to Civil**
12 **Service rules?**
13 MR. NOVIKOFF: Objection. Form. 3:09:16PM
14 A Yes. 3:09:17PM
15 **Q Do you know the name Paul Trosco other 3:09:24PM**
16 **than from this document?**
17 A No. 3:09:29PM
18 **Q Without reading all of them -- and I 3:09:29PM**
19 **take it you know George Hesse -- do you**
20 **recognize any of the other names in that list?**
21 A No. 3:09:37PM
22 **Q Who completed or what individual or 3:09:48PM**
23 **entity or position would have responsibility or**
24 **authority to fill in the handwritten notations**
25 **on action code and effective date?**
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1 CYNTHIA DISTEFANO
2 A Maryann Minerva, who signed it. 3:10:00PM
3 **Q And then she would return it? 3:10:02PM**
4 A Yes. And then we review it to see 3:10:04PM
5 whether those are legitimate appointments.
6 **Q Have you ever spoken directly with 3:10:19PM**
7 **Maryann Minerva?**
8 A No. 3:10:22PM
9 **Q To your knowledge, was Maryann -- 3:10:23PM**
10 **strike that.**
11 **Is there anything on the document that 3:10:43PM**
12 **indicates when it was received or viewed by**
13 **Civil Service?**
14 MS. ZWILLING: You mean after it was 3:11:05PM
15 signed by Maryann Minerva?
16 MR. GRAFF: Yes. 3:11:07PM
17 A We do clock them in, but that's not on 3:11:08PM
18 this copy. It might be on the back of our copy.
19 I don't know. On the original.
20 **Q When it says "village list," I 3:11:18PM**
21 **understood that that indicates that these are**
22 **all residents of Ocean Beach?**
23 A Yes. 3:11:25PM
24 **Q The second individual in position two, 3:11:28PM**
25 **I think it says Michael Pagan.**
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1 CYNTHIA DISTEFANO
2 **Q Underneath, in the small text, it's a 3:12:55PM**
3 **little hard to see. Underneath the line, the**
4 **second line says "necessary special**
5 **requirement"?**
6 A Yes. 3:13:06PM
7 **Q What is that referring to here? 3:13:07PM**
8 A It's directions to the hiring 3:13:13PM
9 jurisdiction.
10 **Q Earlier, when we had looked at the 3:13:18PM**
11 **Civil Service specifications --**
12 A Oh, no, it isn't. Excuse me. There 3:13:22PM
13 isn't anything there. If there were, on the
14 specifications certain ones have necessary
15 special requirements, you need a particular
16 license, for instance, and that would be listed
17 there if there were one.
18 **Q So for the document CD 2 -- it's the 3:13:42PM**
19 **police officer specification.**
20 A Yeah, I know. 3:13:56PM
21 **Q So on this document, there are 3:14:19PM**
22 **necessary special requirements that are listed.**
23 A We don't list all of that for the 3:14:24PM
24 police officers in that part of the
25 certification.
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1 CYNTHIA DISTEFANO
2 A Yes. 3:11:34PM
3 **Q Has an address in Deer Park, New York. 3:11:35PM**
4 A It's a post office box. 3:11:37PM
5 **Q So the address that's listed on 3:11:53PM**
6 **candidate information don't have to do with**
7 **their residency status for purposes of making**
8 **the local village list?**
9 MR. NOVIKOFF: Objection. 3:12:03PM
10 A They have to provide us with their 3:12:04PM
11 legal address in addition to a post office box.
12 **Q So there would be an additional 3:12:10PM**
13 **address for these individuals here who are**
14 **listed with post office box addresses?**
15 A Yes. This is a mailing address so 3:12:17PM
16 they can be mailed their canvass letters.
17 **Q I see. And where would their physical 3:12:22PM**
18 **address be located, if at all, in Civil Service**
19 **documents?**
20 A On the application. 3:12:34PM
21 **Q That was the form we looked at a blank 3:12:35PM**
22 **version earlier today?**
23 A There's a different form for law 3:12:39PM
24 enforcement positions. It's similar, but it is
25 a different form.
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1 CYNTHIA DISTEFANO
2 **Q What types of necessary special 3:14:29PM**
3 **requirements would be listed there if they**
4 **existed?**
5 A Registered nurse certificate -- no, 3:14:38PM
6 that's a bad example. Pistol permit, perhaps.
7 **Q And as far as you know -- this 3:14:58PM**
8 **document is dated 2006. Today, though, is a**
9 **pistol permit a necessary special requirement**
10 **for the position of police officer open**
11 **competitive in Ocean Beach?**
12 A I used that as an example. There are 3:15:11PM
13 certain titles, not police officer. You asked
14 for an example of a necessary special request.
15 **Q I understand. I'm asking now beyond 3:15:20PM**
16 **it being an example.**
17 A That's part of their training. 3:15:23PM
18 Obviously, they're taught how to shoot.
19 **Q But possessing a pistol permit -- 3:15:28PM**
20 A I don't believe police officers need 3:15:32PM
21 one. The fact of being a police officer
22 replaces that, to my knowledge.
23 **Q So in order to obtain appointment to 3:15:40PM**
24 **the open competitive class position police**
25 **officer, there isn't an independent requirement**
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CYNTHIA DISTEFANO

of having a pistol permit?

A No. They go through the academy. All 3:15:50PM
they have to do is pass all these qualifying
exams and be a high school graduate and be among
the top three acceptors for the position.

MR. GRAFF: I'll ask the court 3:16:10PM
reporter to mark as Exhibit CD 13 a one-page
document produced by the county without
Bates numbers.

(Whereupon, a letter was marked as 3:16:21PM
DiStefano Exhibit 13 for identification, as
of this date.)

BY MR. GRAFF: 3:16:56PM

Q Ms. DiStefano, when you've had a 3:16:57PM
chance to look it over, could you tell me if the
form of this document is something that you
recognize, if not the specific addressee
indicated at the top?

A I recognize the form. I don't 3:17:11PM
recognize the specific addressee.

Q What is the function of this form? 3:17:18PM

A It's the schedule for the physical 3:17:20PM
fitness test for police officer for the Village
of Ocean Beach part-time.

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CYNTHIA DISTEFANO

Q At the bottom of the page, there's 3:17:31PM
bold capital italicized text. "If you fail the
physical fitness test or fail to appear for this
test, you will eliminated from further
consideration."

Do you know what it means to be 3:17:45PM
eliminated from further consideration in this
context?

MS. ZWILLING: Objection. I think 3:17:50PM
it's pretty self-explanatory, but the
witness can answer.

BY MR. GRAFF: 3:17:54PM

Q Are you, for example, forever barred 3:17:55PM
from consideration for that position in Ocean
Beach or is it something less than that?

A This is for a part-time position. We 3:18:05PM
might consider the person later. We don't like
to waste our time and the time of the person who
was going to administer the test.

Q And is that true also if -- I may have 3:18:20PM
misunderstood. If you failed the physical exam,
is it permissible under Civil Service
regulations, guidelines, specifications to take
a physical fitness test as part of attempts to

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CYNTHIA DISTEFANO

attain another position?

A There is an appeal process to this. 3:18:40PM
You get one extra shot under appeal.

Q And is that just be respect to, in the 3:18:45PM
case of this document, applying for the police
officer part-time position?

A No. That's any time we administer the 3:18:54PM
physical fitness test, the person may appeal.

Q So just as an example. In the year 3:19:01PM
2005 an individual failed a physical fitness
test for this position. In the year 2008, could
they take a physical fitness test for, say, a
full-time police officer position?

A Yes. 3:19:18PM

Q Are there any criteria pursuant to 3:19:22PM
which the decision is made whether or not a
person is eliminated from further consideration
as stated at the bottom of the document?

MR. NOVIKOFF: Other than committing a 3:19:37PM
felony?

MR. GRAFF: That's not what it states 3:19:39PM
there.

A If they fail to appear, they're 3:19:42PM
removed from consideration.

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CYNTHIA DISTEFANO

Q I think earlier you had mentioned that 3:19:48PM
sometimes there are exceptions to that. Was I
mistaken?

MR. NOVIKOFF: Objection. The 3:19:54PM
testimony was what it was.

MS. ZWILLING: I don't think that's 3:19:57PM
what it was.

BY MR. GRAFF: 3:19:59PM

Q Are there exceptions? 3:19:59PM

A For a part-time position, there might 3:20:00PM
be if there were extenuating circumstances.

Q What are the criteria, if any, for 3:20:07PM
evaluating whether there are extenuating
circumstances?

A Depends what the reason is. 3:20:14PM

Q So there's no preestablished set of 3:20:16PM
criteria that would demonstrate extraordinary
circumstances?

A Established, no. 3:20:23PM

Q Who has the responsibility or 3:20:24PM
authority to grant an exception to that basic
rule?

A Stanley Pelk, whose name is on here, 3:20:32PM
in the relatively simple matters. If it becomes

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1 CYNTHIA DISTEFANO
2 a contentious issue, that would move up the
3 ladder to the chief of examinations or to the
4 personnel director.
5 **Q And the typewritten signature block 3:20:50PM**
6 **indicates Stanley Pelk, examinations division,**
7 **principal personnel analyst. Are there other**
8 **divisions in which principal personnel analysts**
9 **work in the department?**
10 A There are three divisions where 3:21:09PM
11 principal personnel analysts work.
12 **Q And what are the three? 3:21:15PM**
13 A Classification, examinations and 3:21:16PM
14 administration.
15 **Q So in the context of Ocean Beach, is 3:21:25PM**
16 **there a different principal personnel analyst in**
17 **each of those three departments whose**
18 **jurisdiction is Ocean Beach?**
19 A Classification is the only one that 3:21:37PM
20 has jurisdictions assigned to particular
21 analysts.
22 **Q What is Stanley Pelk's current 3:21:51PM**
23 **position?**
24 A Principal personnel analyst. 3:21:54PM
25 **Q Is he still in the examinations 3:21:56PM**
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1 CYNTHIA DISTEFANO
2 **stay in a provisional position pending two**
3 **exams," is that an accurate statement with**
4 **respect to any Civil Service positions?**
5 MS. ZWILLING: Police or non-police? 3:24:16PM
6 MR. GRAFF: That exist in Ocean Beach, 3:24:18PM
7 yeah.
8 A It wouldn't be applicable to police 3:24:21PM
9 positions normally.
10 **Q Are there exceptions to that? 3:24:27PM**
11 A As I explained before, I'm not aware 3:24:29PM
12 of any provisional sergeants, but I would think
13 the possibility might exist.
14 **Q And if there was such a thing as 3:24:38PM**
15 **provisional sergeant, would it be true that you**
16 **could remain in that provisional position**
17 **pending two examinations?**
18 A Civil Service rule, as I explained to 3:24:49PM
19 you before, said that if you fail an exam, you
20 can be reappointed once if there are no willing
21 acceptors on the list; but if you fail twice,
22 you cannot be appointed a third time. So in
23 that context, that might literally be accurate.
24 **Q But it's assuming that after the first 3:25:15PM**
25 **fail, there's nobody else who's a willing**
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1 CYNTHIA DISTEFANO
2 **division?**
3 A Yes, he is. 3:21:58PM
4 **Q Is he currently assigned to Ocean 3:21:59PM**
5 **Beach?**
6 A He's not assigned to Ocean Beach. 3:22:01PM
7 **Q I'm sorry. 3:22:03PM**
8 MR. GRAFF: This one is very brief. 3:22:14PM
9 It's a one-page document produced by Ocean
10 Beach bearing Bates No. 3847.
11 (Whereupon, Bates document 3847 was 3:22:20PM
12 marked as DiStefano Exhibit 14 for
13 identification, as of this date.)
14 BY MR. GRAFF: 3:23:00PM
15 **Q Ms. DiStefano, have you ever seen this 3:23:01PM**
16 **particular letter before? (Handing.)**
17 A I have not. 3:23:05PM
18 **Q I have a question just on the very 3:23:06PM**
19 **last sentence, last two sentences of the last**
20 **full paragraph.**
21 A May I read it? 3:23:13PM
22 **Q Please. 3:23:14PM**
23 A I have read it. 3:24:02PM
24 **Q The second-to-last sentence in the 3:24:03PM**
25 **paragraph, "According to Civil Service, you can**
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1 CYNTHIA DISTEFANO
2 **acceptor on the eligibility list; is that**
3 **correct?**
4 A Yes. 3:25:28PM
5 **Q And would the same be true with 3:25:29PM**
6 **respect to after the second fail?**
7 A No. If you fail twice, that's it. 3:25:33PM
8 You're not eligible for a third provisional
9 appointment.
10 **Q And the very last part that gives me 3:25:40PM**
11 **at least four to five years to pass the test, I**
12 **believe you said that the sergeant test is given**
13 **every two years?**
14 A It's every two years. 3:25:49PM
15 **Q I'm not very good with numbers and 3:25:55PM**
16 **months.**
17 MR. CONNOLLY: The author of that may 3:26:02PM
18 not be either.
19 MR. NOVIKOFF: You're asking the 3:26:06PM
20 witness to opine on the knowledge of the
21 author of this document as to the Civil
22 Service law.
23 MR. GRAFF: I'm not. 3:26:12PM
24 BY MR. GRAFF: 3:26:12PM
25 **Q If you're not sure, we can pass on the 3:26:13PM**
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CYNTHIA DISTEFANO

question. But based on the recurring schedule for sergeant's exam, is there a way you can hold the position for as long as five years without passing?

A Well, if the list had just been established and you were allowed to have a provisional appointment.

Q So if the list had just been established but all of the sergeants had been no willing acceptors?

A For the Village of Ocean Beach. This is a promotional list we're speaking of. So then ostensibly two years hence, we give the test again. So that's two years. And then the list is established maybe six months after the test is given. That's two and a half years. And then if another provisional appointment is possible, so the outside possibilities could be five years.

Q Thank you for walking through that.

I think we had covered this earlier. Maybe I misunderstood.

If there's no willing acceptors on the jurisdictional list, can the provisional

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CYNTHIA DISTEFANO

appointment happen without first turning to the county-wide list?

A On a promotional list, there is no county-wide list. It's exclusive to a particular jurisdiction.

Q Just to be absolutely clear, and then let's take a break.

For a promotional position, if a person was working out of title in the base position, would they ever be eligible under Civil Service rules to attain the promotional position?

MR. NOVIKOFF: Form.

MS. ZWILLING: Eligible or could they be appointed into it?

BY MR. GRAFF:

Q Could they be appointed to it?

A Without having taken the examination?

Q If they had been out of title for whatever reason and they hadn't been duly appointed and confirmed by Civil Service in the base position.

A In the base position, yes.

MR. NOVIKOFF: Objection to form.

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CYNTHIA DISTEFANO

BY MR. GRAFF:

Q If you understand --

A You mean a police officer in this case?

Q Yes. And sergeant is promotional from police officer?

A Yes, it is.

MR. NOVIKOFF: Objection.

BY MR. GRAFF:

Q So if you weren't holding the position of police officer in compliance with Civil Service requirements for the minimum period, could you ever validly be appointed to the promotional position of sergeant having not satisfied the police officer position?

MR. NOVIKOFF: Objection.

A You wouldn't be eligible to take the sergeant's examination.

MR. GRAFF: Let's take a break.

(Whereupon, a break was taken.)

MR. GRAFF: This will be Exhibit 15.

(Whereupon, a letter dated August 6,

2007 was marked as DiStefano Exhibit 15 for

identification, as of this date.)

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CYNTHIA DISTEFANO

BY MR. GRAFF:

Q Ms. DiStefano, when you've had a chance to look over the document, if you could tell me if you've ever seen this actual letter before. (Handing.)

A I have not.

MR. NOVIKOFF: Was this produced by us? Only because there's no Bates stamp number.

MR. GRAFF: I believe that it was produced once with and once without, and we had some trouble locating the one with.

MR. NOVIKOFF: Okay.

BY MR. GRAFF:

Q If I could direct your attention, please, to the full paragraph, first full paragraph of text, "Civil Service rules and regulations require you to work at least one tour during the calendar year."

Do you know, Ms. DiStefano, whether there are Civil Service rules and regulations that require that?

A I'm not aware of any.

Q Does that statement make any sense, as

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CYNTHIA DISTEFANO

far as you know?

MR. NOVIKOFF: Objection. 3:37:57PM

A I can't think what Civil Service rule 3:38:03PM
and regulation would be applicable there.

**Q And the next sentence, "You may work 3:38:07PM
one tour for the village under modified duty
assignment to fulfill the requirement and
fulfill your status."**

**Do you know any Civil Service rules, 3:38:19PM
specifications or guidelines that would
establish that as a requirement?**

A I don't know what his status was, so I 3:38:23PM
would not be prepared to comment on that.

**Q If Officer Carollo was a full-time 3:38:30PM
police officer, competitive class, would he be
required to work at least one tour in the
calendar year to be able to maintain that
position the year after?**

A We really wouldn't know, unless it 3:38:45PM
showed on the payroll that he hadn't worked in a
year, at which point we would ask questions.

**Q And are there routine protocols to -- 3:38:53PM
in reviewing those forms to determine whether
someone has worked a minimum amount in a year?**

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CYNTHIA DISTEFANO

**Is that something the personnel analyst
specifically looks for?**

A Depends what the payroll looks like. 3:39:13PM

**Q But is that a subject that the 3:39:17PM
personnel analyst would particularly be
investigating or is it just something that if
they noticed they could act on?**

A Well, if it were obvious that somebody 3:39:26PM
hadn't worked for a long period of time, we
would ask questions and see what the situation
was.

Q Do you know who Paul Carollo is? 3:39:38PM

A I have a glancing knowledge of the 3:39:45PM
name, but I don't know him.

**Q In what context do you have a 3:39:47PM
glancing --**

A I've seen lists of police officers for 3:39:51PM
Ocean Beach often enough that some of the names
are familiar.

**Q To your knowledge, did -- different 3:40:13PM
question again.**

**Is modified duty assignment, does that 3:40:18PM
mean anything in the context of Civil Service in
Suffolk County?**

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CYNTHIA DISTEFANO

A Not in the context of Civil Service, 3:40:25PM
no.

**Q In what context are you familiar with 3:40:28PM
modified duty assignment?**

A For people who are injured and can't 3:40:33PM
perform the full range of duties, they might get
light duty, modified duty until they are well
enough to function at full at level.

**Q And does a municipality need to report 3:40:50PM
to Civil Service if an employee in a competitive
class position is assigned to modified duties
rather than the duties of their title?**

A No. 3:41:00PM

**Q To your knowledge, did Joseph 3:41:01PM
Loeffler, mayor of Ocean Beach, ever make
inquiry, as far as you know, to the Civil
Service Department with respect to modified duty
in Civil Service issues?**

A Not to my knowledge. 3:41:18PM

**Q Earlier today, we had talked about a 3:41:22PM
meeting that you were a participant in with
Mayor Loeffler and some other representatives.
Do you recall the meeting I'm referring to?**

A Yes. 3:41:33PM

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CYNTHIA DISTEFANO

**Q To your knowledge, was there a 3:41:34PM
subsequent meeting with representatives of Ocean
Beach and of the Suffolk County Department of
Civil Service?**

A No. 3:41:40PM

**Q Was there a prior meeting that you're 3:41:41PM
aware of with those parties?**

A I'm not aware of. 3:41:45PM

**Q Just to be clear, do you know if a 3:41:50PM
meeting happened or not, or is it possible that
one happened that you're not aware of?**

MR. NOVIKOFF: Objection. 3:42:00PM

A It's possible. You asked me what I 3:42:01PM
was aware of.

**Q All right. Thank you. We can put 3:42:03PM
aside Exhibit CD 15.**

**Very briefly, I do want to ask a 3:42:37PM
couple of questions on an older form.**

MR. GRAFF: Please mark this as CD 16. 3:42:48PM
(Whereupon, Suffolk County Department 3:42:52PM
of Civil Service Certification of Eligibles
was marked as DiStefano Exhibit 16 for
identification, as of this date.)

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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 3:43:29PM
3 Q This is another certification of 3:43:36PM
4 eligibles. This one is dated May 16th, 1995.
5 But it appears to be in a very similar form to
6 the other certification we were looking at.
7 (Handing.)
8 If you could just let me know when 3:43:52PM
9 you've had a chance to review it.
10 A I have reviewed it. 3:43:56PM
11 Q Now, in the top area between two lines 3:44:05PM
12 there's capitals, "list not pre-canvassed."
13 A Yes. 3:44:15PM
14 Q And then underneath that again there's 3:44:18PM
15 the language, "The candidates listed below have
16 been pre-canvassed by the department," and
17 there's a date filled in.
18 A Yes. 3:44:33PM
19 Q Just to be clear, is this language 3:44:35PM
20 here not applicable in light of the statement
21 "list not pre-canvassed"?
22 A It's the same as the other one in that 3:44:44PM
23 regard, yes.
24 Q And then at the top, "for the position 3:44:46PM
25 of." Do you see that line?
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1 CYNTHIA DISTEFANO
2 which used to be issued for 30 days. Now we
3 issue for 60 days. So certification is a much
4 shorter lived document than the eligibles list
5 itself.
6 Q That's all for that form. Thank you. 3:46:12PM
7 MR. GRAFF: This is a one-page 3:46:29PM
8 document, CD 17, produced without Bates
9 number.
10 (Whereupon, a letter dated October 6, 3:46:36PM
11 2005 was marked as DiStefano Exhibit 17 for
12 identification, as of this date.)
13 BY MR. GRAFF: 3:47:32PM
14 Q Ms. DiStefano, have you had a chance 3:47:32PM
15 to read this over?
16 A I have. 3:47:35PM
17 Q Have you seen this letter before? 3:47:35PM
18 A I'm not sure. 3:47:39PM
19 Q Do you know who Alan Loeffler is? 3:47:40PM
20 He's referenced in the first sentence of the
21 first paragraph.
22 A Just as the letter describes him, as a 3:47:48PM
23 police officer in the village.
24 Q Other than that, do you have any -- 3:47:51PM
25 A No. 3:47:53PM
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1 CYNTHIA DISTEFANO
2 A Yes. 3:44:52PM
3 Q Going off towards the end of it, 3:44:52PM
4 there's 10/2/92 and then some more
5 abbreviations. Do you know what the remainder
6 of that line says?
7 A It was established 10-2-92 and it's 3:45:02PM
8 extended to establishment of new list.
9 Q Do you understand what that means in 3:45:11PM
10 this context?
11 A Yes. 3:45:13PM
12 Q Can you explain that, please? 3:45:14PM
13 A A list may live up to four years per 3:45:15PM
14 Civil Service law. When a new list is
15 established prior to the four years, then the
16 existing list dies and it's replaced by the new
17 one. We used to put that on as standard
18 language. We don't do that anymore.
19 Q And the expiration date written in, 3:45:33PM
20 July 15th, '95, is that at all modified by the
21 extension language that you just explained?
22 A There are two things we're talking 3:45:44PM
23 about. We're talking about the list, which can
24 live for four years from the date that it's
25 established, and the certification of eligibles,
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1 CYNTHIA DISTEFANO
2 Q The last sentence of the first 3:47:59PM
3 paragraph of this letter signed by Phillip B.
4 Cohen, principal personnel analyst, the last
5 sentence of the full paragraph, first full
6 paragraph states, "If Mr. Loeffler has not met
7 this requirement, we cannot certify his
8 employment with the village as a police
9 officer." Do you know what it means to certify
10 his employment in this context?
11 A Certify -- the next time the payroll 3:48:28PM
12 comes up -- we have a duty to certify employment
13 as in conformance, and we will not be able to do
14 that with this person unless he produces proof
15 that he's got his training.
16 Q And is the certification referenced in 3:48:43PM
17 this context different than certifying the
18 payroll?
19 A It's the employment, is really -- 3:48:53PM
20 yeah. We're certifying the payroll in that the
21 employment shown on the payroll conforms with
22 our records. So we certify the payroll. We
23 also certify the employment on an ongoing basis
24 in conjunction with these CS-150s, or we send a
25 letter in this case when something comes up that
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1 CYNTHIA DISTEFANO
2 we can no longer certify that employment as in
3 conformance.
4 **Q Other than the certification and 3:49:23PM**
5 **payroll and certification of CS-150s, are there**
6 **any other aspects of certification of employment**
7 **that have to be done routinely?**
8 A No. 3:49:36PM
9 **Q Looking at the second paragraph, 3:49:41PM**
10 **I'm -- for the sake of the court reporter, I'm**
11 **just going to only read out the second sentence.**
12 **"Continued employment would be a violation of**
13 **New York State Civil Service law."**
14 **In the context of this paragraph, do 3:49:58PM**
15 **you understand what that's referring to?**
16 A I do. 3:50:02PM
17 **Q Can you explain that, please. 3:50:03PM**
18 A Civil Service law mandates that 3:50:04PM
19 employment be in conformance with the law and
20 continued employment in violation is a
21 misdemeanor, according to, what, Section 100 or
22 thereabouts.
23 **Q Other than Section 100 or thereabouts, 3:50:20PM**
24 **are you aware of any other specific provision of**
25 **Civil Service law that this would refer to?**
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1 CYNTHIA DISTEFANO
2 Civil Service.
3 **Q And as far as you know, on 3:51:54PM**
4 **October 6th, 2005, was Edward Paradiso chief**
5 **of the Ocean Beach village police department?**
6 A Edward Paradiso was never chief of the 3:52:04PM
7 Ocean Beach village police department.
8 **Q Do you know why Phillip Cohen would've 3:52:10PM**
9 **addressed a letter to him in that capacity?**
10 A He used the village's in-house title. 3:52:20PM
11 Edward Paradiso is a sergeant.
12 **Q And are there -- okay. 3:52:28PM**
13 **As far as you know, are there any 3:52:39PM**
14 **other individuals or positions in the Ocean**
15 **Beach -- in the Village of Ocean Beach that had**
16 **in-house titles that were not the same as Civil**
17 **Service titles?**
18 MS. ZWILLING: How would she know 3:52:50PM
19 that?
20 MR. GRAFF: If she knows. She can 3:52:52PM
21 answer as far as you knows.
22 A George Hesse. 3:52:56PM
23 **Q And what was the official title for 3:52:57PM**
24 **George Hesse?**
25 A Police officer. 3:53:01PM
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1 CYNTHIA DISTEFANO
2 A It's difficult to isolate in that 3:50:41PM
3 context. Civil Service law describes the whole
4 employment process, and this is a part of it
5 that's not in conformance. The specification
6 says you have to have this, and that shows a
7 violation.
8 **Q And I know you didn't recognize the 3:51:01PM**
9 **Alan Loeffler name specifically. But is the**
10 **issue of a person working as a police officer in**
11 **Ocean Beach without having the Municipal Police**
12 **Training Council certificate something you**
13 **remember having discussed with Phillip Cohen in**
14 **or around October 2005?**
15 A No. 3:51:23PM
16 **Q The top left of the letterhead block, 3:51:29PM**
17 **where it has the address, says "Department of**
18 **Civil Service/Human Resources."**
19 A Yes. 3:51:37PM
20 **Q What is human resources referred to in 3:51:37PM**
21 **that context?**
22 A That's the official name of the 3:51:41PM
23 department.
24 **Q Of Civil Service? 3:51:43PM**
25 A Yes. We handle things in addition to 3:51:44PM
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1 CYNTHIA DISTEFANO
2 **Q And the in-house title that you're 3:53:01PM**
3 **aware of?**
4 A Chief, acting chief, sergeant. 3:53:07PM
5 **Q Other than Ed Paradiso and George 3:53:10PM**
6 **Hesse, are you aware of any other employees at**
7 **Ocean Beach whose in-house titles didn't match**
8 **their Civil Service titles?**
9 A No. 3:53:22PM
10 **Q Other than this letter itself, have 3:53:26PM**
11 **you ever seen another letter from a**
12 **representative of the Civil Service Department**
13 **addressed to somebody by their in-house title**
14 **rather than Civil Service title?**
15 A I don't know. 3:53:41PM
16 MR. GRAFF: If we could take a short 3:53:48PM
17 break.
18 (Whereupon, a break was taken.) 3:53:57PM
19 BY MR. GRAFF: 3:57:53PM
20 **Q We may have already covered this. 3:58:15PM**
21 **Just to be clear, a provisional appointment,**
22 **when it's made, does it require any approval by**
23 **the Civil Service Department to appoint someone**
24 **provisionally?**
25 A Yes. 3:58:27PM
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1 CYNTHIA DISTEFANO
2 **Q And are there any criteria used to 3:58:29PM**
3 **determine whether to approve a provisional**
4 **appointment?**
5 A Yes. 3:58:38PM
6 **Q And what are those criteria? 3:58:39PM**
7 A That there is no valid eligible list 3:58:41PM
8 with three willing acceptors and that the person
9 appointed meets all of the qualifications.
10 **Q And until approval is granted, is it 3:58:51PM**
11 **consistent with Civil Service laws for the**
12 **individual in question to begin serving in the**
13 **capacity to which they're being provisionally**
14 **appointed, like while approval is pending?**
15 A There are many positions that evolve 3:59:13PM
16 as time goes on and more responsibilities are
17 added. So somebody might be working above
18 whatever level, and then they start a process to
19 make a provisional appointment. For an official
20 appointment and an increase in salary, that
21 shouldn't occur before we approve it. But if we
22 approve it shortly thereafter, we're not going
23 to fuss about that.
24 **Q Ms. DiStefano, did you do anything to 3:59:46PM**
25 **prepare for today's deposition?**
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1 CYNTHIA DISTEFANO
2 A That's the employment record that's 4:00:48PM
3 produced via the CS-150 report of personnel
4 changes.
5 MS. ZWILLING: The roster cards that 4:00:55PM
6 we went through with Allison Sanchez's
7 deposition.
8 MR. GRAFF: Do we not have those? 4:01:01PM
9 MS. ZWILLING: Yes. You used them as 4:01:03PM
10 exhibits at Allison Sanchez's deposition.
11 MR. GRAFF: Off the record. 4:01:10PM
12 (Whereupon, a discussion was held off 4:01:11PM
13 the record.)
14 BY MR. GRAFF: 4:02:21PM
15 **Q Other than reviewing those documents 4:02:42PM**
16 **and meeting with Ms. Zwilling, was there**
17 **anything else that you did to prepare in**
18 **connection with your deposition today?**
19 A No. 4:02:49PM
20 **Q Did you review any Civil Service 4:02:50PM**
21 **regulations in advance of the deposition?**
22 A I read 75B. 4:02:57PM
23 **Q And did you read that in a McKinney's 4:03:02PM**
24 **book?**
25 A Yes. 4:03:06PM
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1 CYNTHIA DISTEFANO
2 A I met with Arlene Zwilling yesterday. 3:59:51PM
3 MR. GRAFF: Arlene, I assume that's an 4:00:00PM
4 attorney-client meeting?
5 MS. ZWILLING: Yes. Of course. 4:00:03PM
6 BY MR. GRAFF: 4:00:04PM
7 **Q Other than meeting with 4:00:05PM**
8 **Ms. Zwilling -- let me just back once more.**
9 **Did the Civil Service Department ever 4:00:12PM**
10 **approve George Hesse's provisional promotion to**
11 **the sergeant's position?**
12 A No. 4:00:20PM
13 **Q Other than your meeting with 4:00:20PM**
14 **Ms. Zwilling yesterday, did you do anything else**
15 **to prepare in connection with your deposition**
16 **today?**
17 A I read through the documents that we 4:00:27PM
18 have in our file.
19 **Q Are those the documents that were 4:00:31PM**
20 **produced in this case, if you know?**
21 A Yes. 4:00:36PM
22 **Q Did you review any other documents? 4:00:36PM**
23 A Roster records. 4:00:41PM
24 **Q And what are the roster records that 4:00:45PM**
25 **you're referring to?**
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1 CYNTHIA DISTEFANO
2 **Q Did you read any other provisions of 4:03:07PM**
3 **Civil Service law?**
4 A Not in specific preparation for this, 4:03:11PM
5 no.
6 **Q Did you review any specific Civil 4:03:17PM**
7 **Service rules in preparation for this**
8 **deposition?**
9 A No. 4:03:24PM
10 **Q Did you speak to anyone else other 4:03:24PM**
11 **than Ms. Zwilling in connection with your**
12 **deposition today?**
13 A I let Alan Schneider know I was coming 4:03:30PM
14 here for this.
15 **Q And when did you let him know that? 4:03:35PM**
16 A It was within the last few weeks, when 4:03:40PM
17 we set the date up.
18 **Q Other than letting him know it had 4:03:44PM**
19 **been scheduled, did you have any further**
20 **conversations with Alan Schneider?**
21 A Not about this subject, no. 4:03:52PM
22 MR. GRAFF: I don't mean to intrude on 4:03:59PM
23 attorney-client with the next question. I'm
24 happy if you tell me that's where it's
25 going.
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 4:04:05PM
3 **Q Do you know who made the decision to 4:04:05PM**
4 **have you appear as the witness at this**
5 **deposition?**
6 A Arlene Zwilling and I talked about who 4:04:16PM
7 might be a source of the sort of information she
8 thought you were seeking, and we came up with
9 me.
10 **Q I believe you testified earlier that 4:04:32PM**
11 **you had reviewed the complaint filed in federal**
12 **court in this case; is that true?**
13 MS. ZWILLING: Are you asking her if 4:04:40PM
14 her prior testimony is true?
15 MR. GRAFF: If my recollection of the 4:04:43PM
16 testimony is correct.
17 MS. ZWILLING: Yes, she did say that. 4:04:50PM
18 BY MR. GRAFF: 4:04:51PM
19 **Q When did you first review the 4:04:51PM**
20 **complaint in this case?**
21 A I don't remember. 4:04:54PM
22 **Q When did you most recently review the 4:04:55PM**
23 **complaint in this case?**
24 A I probably glanced at it within the 4:04:59PM
25 last few days, but I didn't read it carefully.
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 4:05:54PM
3 **Q Do you recall any of the substance of 4:06:01PM**
4 **what was discussed about the allegations in your**
5 **conversation with Mr. Schneider and Mr. Cohen?**
6 A We looked at the records to see 4:06:16PM
7 whether we thought there was any substance in
8 the allegation that some rights had been
9 violated.
10 **Q And did the three of you look at the 4:06:31PM**
11 **records together?**
12 A I don't remember. 4:06:35PM
13 **Q Did your conversation with 4:06:38PM**
14 **Mr. Schneider and Mr. Cohen happen prior to your**
15 **conversation with Ms. Sanchez?**
16 A Yes. 4:06:46PM
17 **Q In your conversation with 4:06:56PM**
18 **Mr. Schneider and Mr. Cohen, was any conclusion**
19 **or consensus reached with respect to whether any**
20 **of the allegations had merit?**
21 MR. NOVIKOFF: Allegations in general 4:07:07PM
22 or allegations pertaining to the Civil
23 Service Department?
24 MR. GRAFF: Specifically first 4:07:13PM
25 pertaining to the Civil Service.
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1 CYNTHIA DISTEFANO
2 **Q Did you ever discuss any of the 4:05:01PM**
3 **allegations in the complaint with anyone other**
4 **than Ms. Zwilling?**
5 A When I first saw it, I discussed it in 4:05:09PM
6 my department.
7 **Q Who did you discuss it with in your 4:05:12PM**
8 **department?**
9 A With Alan Schneider and with Phillip 4:05:15PM
10 Cohen.
11 **Q Did you discuss it with anyone else? 4:05:19PM**
12 A No. 4:05:20PM
13 **Q Did you discuss it with both of them 4:05:24PM**
14 **jointly or in separate conversations?**
15 A Both. 4:05:28PM
16 **Q Was there one occasion when you 4:05:30PM**
17 **discussed it together with both of them?**
18 A I don't know. 4:05:35PM
19 And I discussed it also with Allison. 4:05:39PM
20 She was in the department.
21 **Q Allison Sanchez? 4:05:44PM**
22 A Yes. 4:05:45PM
23 MR. NOVIKOFF: I wondered when you 4:05:51PM
24 were going to get to this line of
25 questioning.
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1 CYNTHIA DISTEFANO
2 MS. ZWILLING: I'm going to object, 4:07:17PM
3 but the witness can answer the question.
4 A What we were concerned with was were 4:07:27PM
5 the rights of anyone violated in the dismissal,
6 and we looked at the roster cards to see whether
7 Civil Service protection was afforded to anyone
8 who was let go.
9 **Q Was there any discussion or reference 4:07:47PM**
10 **to Civil Service law Section 75B as it might or**
11 **might not apply to the plaintiffs?**
12 A Not to my recollection. 4:07:57PM
13 **Q Do you recall ever discussing that 4:08:00PM**
14 **provision with anyone in the Civil Service**
15 **Department?**
16 A Ever? 4:08:05PM
17 **Q Yes. 4:08:06PM**
18 A Or in conjunction with this -- 4:08:06PM
19 **Q No. Ever. 4:08:08PM**
20 A I addressed that this morning. 4:08:12PM
21 MR. GRAFF: Off the record. 4:08:16PM
22 (Whereupon, a discussion was held off 4:08:16PM
23 the record.)
24 MR. GRAFF: Back on the record. 4:09:07PM
25
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1 CYNTHIA DISTEFANO
2 BY MR. GRAFF: 4:09:15PM
3 Q Ms. DiStefano, my question is: Have 4:09:15PM
4 you ever had any discussions with anyone in the
5 Civil Service Department at any point, not
6 necessarily in connection with this case, about
7 the meaning and implications of Civil Service
8 law 75B?
9 A Just as I mentioned this morning, very 4:09:34PM
10 peripherally in relation to that one incident.
11 Q Does anybody in the Civil Service 4:09:40PM
12 Department have any particular expertise with
13 respect to Section 75B? And I'm not talking
14 about counsel.
15 A No. 4:09:52PM
16 Q Do you recall whether in your 4:10:00PM
17 conversation with Mr. Schneider and Mr. Cohen,
18 there was any discussion of a specific
19 allegation in the complaint that included a
20 quotation "leg to stand on" as an expression?
21 A No. 4:10:15PM
22 Q Does that sound familiar? 4:10:16PM
23 A No. 4:10:17PM
24 Q Did your discussion with Mr. Schneider 4:10:28PM
25 or Mr. Cohen address any other allegations in
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1 CYNTHIA DISTEFANO
2 and Mr. Cohen?
3 A We discussed just asking her whether 4:11:43PM
4 or not she had such a relationship.
5 Q And without getting into whether she 4:11:49PM
6 did or didn't --
7 MR. NOVIKOFF: Oh, no, no, no. That's 4:11:55PM
8 the one area where I think that you have
9 some relevance since you alleged it, so
10 let's get into that.
11 BY MR. GRAFF: 4:12:03PM
12 Q Would there be anything improper under 4:12:03PM
13 Civil Service laws or regulations or
14 specifications if that allegation were true?
15 A As long as it didn't impact on the 4:12:15PM
16 performance of the work in the Civil Service
17 Department, no.
18 Q Did either Mr. Schneider or Mr. Cohen 4:12:25PM
19 indicate that they had prior conversations with
20 Ms. Sanchez with respect to any of the matters
21 alleged in the complaint?
22 MR. NOVIKOFF: That's a pretty broad 4:12:38PM
23 question. Form objection.
24 A I don't know for sure. 4:12:42PM
25 MR. NOVIKOFF: You allege issues 4:12:44PM
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1 CYNTHIA DISTEFANO
2 the complaint with respect to other entities?
3 A Yes. 4:10:36PM
4 Q And do you recall in substance -- in 4:10:37PM
5 substance, what those allegations that you
6 discussed were?
7 A There was an allegation of a 4:10:45PM
8 relationship between Allison and George Hesse.
9 Q Did you discuss any other allegations 4:10:52PM
10 in the complaint, other than those addressed to
11 Civil Service or to Ms. Sanchez's alleged
12 relationship with Mr. Hesse?
13 A I don't think so, but I couldn't 4:11:03PM
14 itemize the complaint.
15 Q And how long after speaking to 4:11:10PM
16 Mr. Schneider and Mr. Cohen did you speak to
17 Ms. Sanchez?
18 A I don't know precisely. 4:11:19PM
19 Q Did you discuss with Mr. Schneider and 4:11:20PM
20 Mr. Cohen how you would approach or speak with
21 Ms. Sanchez about the allegations in the
22 complaint?
23 A About the relationship issue, yes. 4:11:34PM
24 Q And in substance, what did you discuss 4:11:36PM
25 about the relationship issue with Mr. Schneider
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1 CYNTHIA DISTEFANO
2 concerning certification, so your question
3 arguably could be related to that, right?
4 MR. GRAFF: Yeah, that's actually what 4:12:53PM
5 I had intended. I'm sorry if I wasn't
6 clear.
7 BY MR. GRAFF: 4:12:58PM
8 Q Did either Mr. Schneider or Mr. Cohen 4:12:59PM
9 indicate that they had prior communications with
10 Ms. Sanchez regarding certification issues and
11 Ocean Beach?
12 A Oh, Phillip Cohen certainly did. 4:13:09PM
13 Q During that conversation that we've 4:13:12PM
14 been discussing, did Mr. Cohen say anything with
15 respect to certification issues in Ocean Beach?
16 MR. NOVIKOFF: Objection to form. 4:13:21PM
17 A He was very pleased with the efforts 4:13:23PM
18 that Allison made to get their employees in
19 conformance with Civil Service law or off their
20 payroll.
21 Q And was he pleased at the level of her 4:13:32PM
22 effort or at the success of her effort, if that
23 distinction was clear to you?
24 A Well, you're asking me for my opinion 4:13:44PM
25 as to what his judgment was.
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1 CYNTHIA DISTEFANO
2 **Q Right. As to what to his judgment was 4:13:49PM**
3 **as communicated to you in that conversation.**
4 A He was pleased with both the 4:13:58PM
5 performance and the results.
6 **Q And other than expressing pleasure 4:14:03PM**
7 **with those two items, was anything else**
8 **discussed with respect to Civil Service**
9 **certification issues in Ocean Beach during that**
10 **conversation with you and Mr. Schneider and**
11 **Mr. Cohen?**
12 A We're not speaking of a specific 4:14:19PM
13 conversation. We're speaking of a series.
14 **Q Okay. When you ultimately spoke to 4:14:25PM**
15 **Allison Sanchez, what did you say to her?**
16 A We asked her whether she had a 4:14:36PM
17 relationship with George Hesse.
18 **Q When you say "we," who are you 4:14:42PM**
19 **referring to?**
20 A Alan Schneider and I. 4:14:44PM
21 **Q Where did that conversation take 4:14:46PM**
22 **place?**
23 A In my office. 4:14:48PM
24 **Q Prior to -- during that conversation, 4:14:52PM**
25 **did Ms. Sanchez communicate to you that she was**
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1 CYNTHIA DISTEFANO
2 **Q Did she say anything else in that 4:15:47PM**
3 **conversation?**
4 A We asked the question, and she 4:15:51PM
5 answered the question. She did not have a
6 relationship with George Hesse.
7 **Q Other than that one question and one 4:15:56PM**
8 **response, was anything else discussed in that**
9 **meeting with Allison Sanchez?**
10 A I don't remember. That was the 4:16:07PM
11 specific purpose of the meeting.
12 **Q And other than your conversation with 4:16:14PM**
13 **Mr. Schneider and Mr. Cohen and now this meeting**
14 **with Ms. Sanchez, did you speak to anyone else**
15 **about any of the allegations in the complaint?**
16 MS. ZWILLING: Any of the allegations 4:16:26PM
17 or the ones involving Civil Service?
18 MR. GRAFF: I'm asking more broadly, 4:16:29PM
19 any of the allegations.
20 MR. NOVIKOFF: I object to the form. 4:16:34PM
21 A I don't -- I don't remember. 4:16:37PM
22 **Q Do you remember whether you had any 4:16:38PM**
23 **discussions with anyone, other than those people**
24 **we've identified, regarding the allegations**
25 **specifically pertaining to Civil Service?**
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1 CYNTHIA DISTEFANO
2 **already aware of the allegations in the**
3 **complaint?**
4 A No. 4:15:03PM
5 **Q Did she communicate to you that she 4:15:08PM**
6 **was learning of those allegations for the first**
7 **time in the meeting?**
8 MS. ZWILLING: Objection. 4:15:13PM
9 MR. NOVIKOFF: Yeah. 4:15:16PM
10 MS. ZWILLING: Your question assumes 4:15:17PM
11 that prior to the conversation the witness
12 has described, Allison Sanchez was in
13 possession of a copy of the Complaint and
14 had reviewed it, which may or may not be the
15 case.
16 MR. GRAFF: My question is whether or 4:15:26PM
17 not Allison Sanchez indicated that was the
18 case either way.
19 A Not to me. 4:15:32PM
20 MR. NOVIKOFF: I'm still objecting to 4:15:34PM
21 form.
22 BY MR. GRAFF: 4:15:36PM
23 **Q And what did Ms. Sanchez say in 4:15:37PM**
24 **response to that question?**
25 A She said no. 4:15:40PM
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1 CYNTHIA DISTEFANO
2 A I don't understand your question. 4:16:53PM
3 **Q Do you remember if you discussed the 4:16:54PM**
4 **allegations about the Civil Service Department**
5 **in the complaint with anyone either than**
6 **Mr. Schneider, Mr. Cohen or Ms. Sanchez?**
7 A That's the same question you just 4:17:05PM
8 asked, as far as I can tell.
9 **Q Have you reviewed any of the 4:17:20PM**
10 **deposition transcripts in this case?**
11 A No, I have not. 4:17:23PM
12 **Q Have you reviewed any of the documents 4:17:31PM**
13 **that have been produced by any party other than**
14 **Suffolk County in this case?**
15 MR. NOVIKOFF: Prior to the 4:17:40PM
16 deposition?
17 MR. GRAFF: Yes. 4:17:42PM
18 A The correspondence that the village 4:17:43PM
19 produced, the CS-150s and whatever, I have seen.
20 **Q Do you know whether anybody else in 4:17:58PM**
21 **the Civil Service Department conducted any sort**
22 **of investigation in connection with any of the**
23 **matters alleged in the complaint? And that**
24 **would be exclusive of counsel.**
25 A I would say -- how are you describing 4:18:11PM
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1 CYNTHIA DISTEFANO
2 conducted an investigation? What we did was
3 speak with Allison about that one particular
4 allegation. Is that an investigation? I don't
5 think so.
6 **Q Do you know whether anyone else 4:18:23PM**
7 **conducted any sort of follow-up or inquiries**
8 **regarding any other allegations in the**
9 **complaint?**
10 A We looked to -- as I said, we looked 4:18:35PM
11 to see whether any rights, Civil Service rights
12 had been violated.
13 **Q Other than you, Mr. Schneider and 4:18:43PM**
14 **Mr. Cohen, as far as you know, did anyone else**
15 **look to see that within the Department of Civil**
16 **Service?**
17 A I'm not aware of anybody. 4:18:51PM
18 MS. ZWILLING: That's twice, and you 4:18:52PM
19 still haven't asked if they made a
20 determination and what that determination
21 was.
22 MR. NOVIKOFF: I'm getting there. 4:18:59PM
23 BY MR. GRAFF: 4:19:04PM
24 **Q And what was the determination 4:19:04PM**
25 **reached, if one was reached by you,**
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1 CYNTHIA DISTEFANO
2 State Civil Service Department that one day
3 would constitute a break.
4 **Q And to be clear, that isn't referring 4:20:21PM**
5 **to an employee who takes a sick day or a day**
6 **off, but an actual cessation of their employment**
7 **in a position?**
8 A That's correct. 4:20:35PM
9 **Q Are there any exceptions to the break 4:20:36PM**
10 **in service implications that you described?**
11 A I'm not aware of any. 4:20:44PM
12 **Q Do you know whether Section 5B of the 4:20:52PM**
13 **Civil Service law is limited to employees of a**
14 **public -- of a municipality whose status would**
15 **entitle them to protections under Section 75, as**
16 **you understand Section 75?**
17 MS. ZWILLING: Objection. 4:21:14PM
18 MR. NOVIKOFF: Objection. 4:21:15PM
19 MR. GRAFF: I'll reword it. 4:21:17PM
20 MR. NOVIKOFF: I think anything past 4:21:20PM
21 the first six words calls for a legal
22 conclusion.
23 BY MR. GRAFF: 4:21:25PM
24 **Q If an employee is not entitled to 4:21:28PM**
25 **protections under Section 75, as far as you**
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1 CYNTHIA DISTEFANO
2 **Mr. Schneider or Mr. Cohen?**
3 A That the five people did not have the 4:19:13PM
4 status that would have granted them any Civil
5 Service protection.
6 MR. NOVIKOFF: There's one more 4:19:27PM
7 question you need to ask on that. Why?
8 Because I'll ask it if you don't ask it.
9 THE WITNESS: Section 75 of the Civil 4:19:35PM
10 Service law grants protection against
11 disciplinary action to people in the
12 non-competitive class who have been
13 continually employed for five years. These
14 people all had breaks in service, so they
15 did not have five years of continuous
16 service.
17 BY MR. GRAFF: 4:19:52PM
18 **Q What does a break in service mean in 4:19:52PM**
19 **that context?**
20 A A cessation of employment and a 4:19:57PM
21 re-employment.
22 **Q And is there any minimum duration of a 4:20:00PM**
23 **cessation in employment that is a threshold for**
24 **a break in service?**
25 A We have been told by the New York 4:20:12PM
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1 CYNTHIA DISTEFANO
2 **know, would they be -- could they potentially be**
3 **entitled to any protections under Section 75B?**
4 MS. ZWILLING: Objection. 4:21:41PM
5 MR. NOVIKOFF: Objection. 4:21:42PM
6 MS. ZWILLING: That clearly calls for 4:21:43PM
7 her to interpret 75B.
8 MR. NOVIKOFF: Although you've now 4:21:47PM
9 given me a good issue to research for my
10 summary judgment motion.
11 MS. ZWILLING: As a matter of fact, I 4:21:55PM
12 think the answer is pretty clear on the face
13 of 75B. But then again, we're attorneys, so
14 that's why we think it's clear. I cannot
15 permit you to ask that question to the
16 witness because she's not an attorney.
17 MR. GRAFF: Just on terminology. Are 4:22:03PM
18 you not going to permit the witness not to
19 answer the question?
20 MS. ZWILLING: That particular 4:22:10PM
21 question, yes. If you want to try to ask
22 some other questions with respect to that
23 line of inquiry, I may or may not have
24 objections.
25 MR. GRAFF: I'm okay on that line of 4:22:18PM
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1 CYNTHIA DISTEFANO
2 inquiry.
3 Before I conclude, if we could just 4:22:23PM
4 take a break. I know we've marked some
5 previous questions.
6 MS. ZWILLING: Sure. I think we've 4:22:31PM
7 already addressed some of them or
8 essentially gotten past them, but if you
9 want to take a few minutes, sure.
10 (Whereupon, a discussion was held off 4:22:34PM
11 the record.)
12 MR. GRAFF: Then I believe subject to 4:24:01PM
13 any follow-up to Mr. Novikoff's questioning,
14 I'm ready to conclude, and I thank you for
15 your time and patience with the questions
16 today.
17 EXAMINATION 4:24:10PM
18 BY MR. NOVIKOFF: 4:24:11PM
19 Q I will hopefully be very brief. 4:24:12PM
20 Let's just go back to the last few 4:24:14PM
21 questions that Mr. Graff asked you about the
22 break in service issue. Was the break in
23 service a result of the three of plaintiffs --
24 I'm sorry, the five plaintiffs being seasonal
25 employees?
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1 CYNTHIA DISTEFANO
2 A I think they gave us the whole date at 4:25:29PM
3 the beginning.
4 Q Now, under Civil Service law -- in the 4:25:33PM
5 context of Civil Service, Suffolk County Civil
6 Service, was the Village of Ocean Beach required
7 to send to you a CS-150 with regard to any
8 employees not rehired for the following season?
9 A If they were terminated at the end of 4:26:00PM
10 one season, we would not be looking for anything
11 else unless there was re-employment.
12 Q Let's use Mr. Fiorillo as an example 4:26:10PM
13 here and only because he's here.
14 If in the -- if at the end of the 2005 4:26:15PM
15 season Mr. Fiorillo was terminated, which he
16 would've been under the definition of seasonal
17 employment --
18 A Uh-huh. 4:26:29PM
19 Q -- if he was not rehired for the 2006 4:26:29PM
20 season, you would not expect to receive from
21 Ocean Beach the CS-150 concerning Mr. Fiorillo?
22 A That's correct. 4:26:40PM
23 MR. GRAFF: Could I get that read 4:26:45PM
24 back?
25 MR. NOVIKOFF: Sure. 4:26:48PM
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1 CYNTHIA DISTEFANO
2 A Some of it was, yes. 4:24:29PM
3 Q What was the other basis? 4:24:30PM
4 A There was some part-time employment 4:24:32PM
5 interspersed also.
6 Q Now, with regard to seasonal 4:24:37PM
7 employment at Ocean Beach, if I understood the
8 statute correctly, the regulations, it was two
9 weeks before Memorial Day and to two weeks after
10 Labor Day?
11 A That's correct. 4:24:52PM
12 Q So if I understand it correctly, the 4:24:53PM
13 employment terminated on its own at the end of
14 the second week after Labor Day, correct?
15 A They have to tell us when that ends. 4:25:03PM
16 Sometimes they tell us when they put them on
17 that it's seasonal from A to B. Sometimes they
18 send us a separate report when it's over.
19 Q And when you say a separate report? 4:25:13PM
20 A A new CS-150 with the termination 4:25:15PM
21 date. Most places put it together on the one.
22 Q To your understanding, did Ocean Beach 4:25:18PM
23 send you a CS-150 at the end of the season to
24 advise you as to the termination of the seasonal
25 employees?
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1 CYNTHIA DISTEFANO
2 (Whereupon, the requested portion was 4:27:00PM
3 read back by the court reporter: If he was
4 not rehired for the 2006 season, you would
5 not expect to receive from Ocean Beach the
6 CS-150 concerning Mr. Fiorillo?)
7 BY MR. NOVIKOFF: 4:27:00PM
8 Q You understood my question, correct? 4:27:01PM
9 A Yes. 4:27:03PM
10 MR. GRAFF: Ken, was your question 4:27:06PM
11 with respect to at the end of that season or
12 the beginning of the next season?
13 MR. NOVIKOFF: I think my question was 4:27:13PM
14 clear. I was referring, you know, to the
15 beginning of the following season.
16 MR. GRAFF: Okay. So they already 4:27:17PM
17 would've received the CS-150?
18 MR. NOVIKOFF: No. I think the 4:27:22PM
19 question was clear. It was over no
20 objection.
21 THE WITNESS: They don't have to send 4:27:25PM
22 us a list of the people they're not hiring.
23 BY MR. NOVIKOFF: 4:27:29PM
24 Q Exactly. Let's say hypothetically for 4:27:30PM
25 the 2006 season, Ocean Beach interviewed 25
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CYNTHIA DISTEFANO

employees for the seasonal job of police officer and they only hired 15. Would they need to advise Civil Service of the 10 that were not hired?

A No. 4:27:50PM

Q Mr. Graff -- in response to 4:28:02PM
Mr. Graff's questions, you referred to the plaintiffs as being terminated or let go. Do you recall that?

A Yes. 4:28:12PM

Q Are you certain as you sit here today 4:28:13PM
that the plaintiffs were terminated and/or let go or could it have been that they were just not rehired?

A I don't use "terminated" in any 4:28:22PM
derogatory sense. It's when the season ends, in effect, they're terminated.

Q So when you used the word "terminated" 4:28:29PM
in response to Mr. Graff, you were referring, if I understand you correctly -- and correct me if I'm wrong -- that they were terminated at the end of the prior season and not rehired for the following season?

A I'd have to look at their individual 4:28:41PM
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CYNTHIA DISTEFANO

rosters to see if that is in effect when the actual termination took place.

Q Let me just lay it out there. 4:28:48PM
Mr. Fiorillo -- and again, I'm only picking on him because he's sitting right next to me -- he was a seasonal police officer for Ocean Beach for the 2005 season. He was not a police officer, according to us, a seasonal police officer for the 2006 season. So given your understanding, Mr. Fiorillo was terminated at the end of the 2005 season and was not rehired for the 2006 season; would that be correct?

MR. GRAFF: Objection. 4:29:20PM

A I'd have to look at his roster record. 4:29:21PM

MS. ZWILLING: Do you want to use the 4:29:34PM
roster cards?

MR. NOVIKOFF: Sure. Let me see. 4:29:37PM

MS. ZWILLING: I don't know if I have 4:29:39PM
all of them here.

MR. NOVIKOFF: Let me take a quick 4:29:41PM
look.

MS. ZWILLING: Tom Snyder, Ed Carter, 4:29:45PM
and I'll look for the others as you go through those. (Handing.)

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CYNTHIA DISTEFANO

MR. NOVIKOFF: I don't need to go 4:30:11PM
through them. That's fine.

BY MR. NOVIKOFF: 4:30:15PM

Q Now, plaintiffs make an allegation in 4:30:17PM
this complaint that Ms. Sanchez and Mr. Hesse conspired to, in sum and substance, injure the plaintiffs and destroy their careers. Do you recall reading those parts of the allegation in the complaint?

A I do. 4:30:35PM

Q In any discussions or review of 4:30:35PM
whatever documentation you looked at or any conversations you've had, did you ever discover, in your opinion, evidence to suggest that Ms. Sanchez was in a conspiracy with Mr. Hesse to harm the plaintiffs?

A I did not. 4:30:52PM

Q In any of your discussions or 4:30:56PM
communications with any individuals at Civil Service, or any review of any documentation, did you ever come to the conclusion that Ms. Sanchez did anything inappropriate with regard to her job performance as it pertains to the five plaintiffs in this lawsuit?

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CYNTHIA DISTEFANO

A I did not. 4:31:13PM

Q In the complaint, the plaintiffs 4:31:24PM
allege the following. I'm going to read it. "Upon information and belief, Sanchez was responsible for appointing and approving the hiring of the uncertified officers at the OBPB."

I'll break it down and ask you some 4:31:42PM
questions.

Was Ms. Sanchez responsible in any 4:31:44PM
manner with regard to the hiring of any officers at Ocean Beach?

A No. 4:31:53PM

Q Would anyone at Civil Service be 4:31:56PM
responsible in any manner for the hiring of any officers at Ocean Beach?

A No. 4:32:02PM

Q Was Ms. Sanchez responsible at all for 4:32:04PM
appointing any employees at Ocean Beach?

A No. 4:32:13PM

Q Would anyone at Civil Service be 4:32:13PM
responsible at all for the appointment of any officers at Ocean Beach?

A No. 4:32:19PM

Q Was Ms. Sanchez responsible in any 4:32:21PM

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CYNTHIA DISTEFANO

manner for the approval of the hiring of any officers at Ocean Beach?

A As reported on the CS-150, yes. 4:32:33PM

Q And describe in what context she would be responsible for the approval?

A She would get the report on the 150 that a police officer was hired, and she would have to be sure that all of those qualifying tests had been passed.

Q And if they weren't, what would be Ms. Sanchez's responsibility upon learning that some of these requirements were not met, if any?

A To contact the village and tell them and to mark that CS-150 as disapproved because whatever was lacking would have been cited.

Q And to your knowledge, did Ms. Sanchez do that?

A Yes, she did. 4:33:12PM

Q And to your knowledge, did Ms. Sanchez do anything with regard to any approval, disapproval of quote/unquote certified officers that, in your opinion, did not follow with Civil Service law, rules or regulations?

A No. 4:33:27PM

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CYNTHIA DISTEFANO

Q Now, you would agree with me that Ms. Sanchez could not force the village through her own actions to do or not do anything?

A That's correct. 4:33:42PM

Q Her role was to -- if I understand correctly, to advise the village that there may have been problems with certain hirings if certain officers did not pass certain tests or did not have the requisite Civil Service requirements, correct?

A Yes. 4:33:56PM

Q And that was the extent of her role with respect to notifying the village, correct?

A And to remind them to -- of what needed to be done to be in compliance. 4:34:04PM

Q And to work with the village to either ensure compliance going forward or to ensure that these officers did not work for the village?

A That's correct. 4:34:17PM

Q And if I understand your testimony, the Civil Service Department was pleased with the efforts that Ms. Sanchez undertook with regard to either getting compliance from Ocean

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CYNTHIA DISTEFANO

Beach and/or getting those officers off of the payroll?

A That's correct. 4:34:40PM

Q In any of your conversations or any of your review of documentation, did you ever see any written communication from Mr. Fiorillo on the issue of uncertified officers at Ocean Beach other than in the complaint?

A No. 4:35:01PM

Q How about with regard to any of the four other plaintiffs?

A I don't recall seeing anything like that, no. 4:35:05PM

Q Do you recall anyone that you would've had communications with since 2001, concerning Ocean Beach, ever hearing a complaint made by Mr. Fiorillo concerning uncertified officers at Ocean Beach?

A No. 4:35:24PM

Q Same question with regard to the four other plaintiffs.

A No. 4:35:27PM

Q Did you ever receive communications from any source prior to receiving the complaint

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CYNTHIA DISTEFANO

that it was Mr. Fiorillo's position that Ms. Sanchez conspired with Mr. Hesse to damage him and his career?

A No. 4:35:48PM

Q Same question with regard to the four plaintiffs.

A No. 4:35:51PM

Q Now, Mr. Graff asked you some questions earlier this afternoon about hiring and firing authority. Do you recall that?

A Yes. 4:36:16PM

Q Now, when you gave those answers that you believe the mayor had hiring and firing authority, what were you referring to?

A He's the appointing authority for the village. 4:36:23PM

Q So under -- is it your understanding based upon Civil Service regulations -- well, do you equate appointing authority with hiring and firing authority?

A Yes. 4:36:36PM

Q Could Mr. Loeffler have delegated the hiring and firing authority to someone else at the village and still maintained appointing

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1 **CYNTHIA DISTEFANO**
2 **authority?**
3 A I'm not sure. 4:36:47PM
4 **Q Now, is appointing authority a defined 4:36:50PM**
5 **term under Civil Service law?**
6 A Yes. 4:36:54PM
7 **Q And what is appointing authority 4:36:54PM**
8 **defined as under the Civil Service law?**
9 A The ability to hire and fire. It's in 4:36:59PM
10 Section 35, I believe.
11 **Q Great? 4:37:04PM**
12 MR. NOVIKOFF: Nothing further. 4:37:06PM
13 MR. GRAFF: I have a few more 4:37:07PM
14 follow-ups.
15 MR. CONNOLLY: I was going to ask -- 4:37:09PM
16 MR. GRAFF: Please. 4:37:09PM
17 EXAMINATION 4:37:09PM
18 BY MR. CONNOLLY: 4:37:12PM
19 **Q Would department heads have firing or 4:37:14PM**
20 **hiring authority?**
21 A It depends on how you define 4:37:19PM
22 department heads.
23 MS. ZWILLING: I'm also going to ask, 4:37:22PM
24 are you talking about anywhere within the
25 county or are you talking specifically about
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1 **CYNTHIA DISTEFANO**
2 **part-time employment have to be reported on a**
3 **CS-150?**
4 A Yes. 4:38:43PM
5 **Q As part of your follow-up after 4:38:46PM**
6 **receiving the complaint, did you or, as far as**
7 **you know, anyone else in the Civil Service**
8 **Department conduct any investigation or make any**
9 **inquiries with respect to the allegation in the**
10 **complaint that George Hesse conspired with**
11 **Allison Sanchez?**
12 MR. NOVIKOFF: Can you read that 4:39:09PM
13 question back.
14 (Whereupon, the requested portion was 4:39:27PM
15 read back by the court reporter: As part of
16 your follow-up after receiving the
17 complaint, did you or, as far as you know,
18 anyone else in the Civil Service Department
19 conduct any investigation or make any
20 inquiries with respect to the allegation in
21 the complaint that George Hesse conspired
22 with Allison Sanchez?)
23 A No. I would say no. 4:39:32PM
24 **Q As far as you know, did Allison 4:39:36PM**
25 **Sanchez ever approve CS-150s for officers who**
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1 **CYNTHIA DISTEFANO**
2 the village?
3 MR. CONNOLLY: Talking specifically 4:37:29PM
4 about the village.
5 A No. A department head would not in a 4:37:31PM
6 village.
7 MR. CONNOLLY: Nothing further. 4:37:42PM
8 EXAMINATION 4:37:43PM
9 BY MR. GRAFF: 4:37:43PM
10 **Q Just a few questions based on the last 4:37:46PM**
11 **set.**
12 **If a seasonal police officer, such as 4:37:51PM**
13 **the plaintiffs, at the end of the season in fact**
14 **continued working throughout the year on a**
15 **part-time basis, would the nature of their**
16 **employment have to be reported at some point**
17 **during the year on a CS-150?**
18 A Yes. 4:38:09PM
19 **Q And at what point? 4:38:10PM**
20 A When their status changed from 4:38:11PM
21 seasonal to something else.
22 **Q And then at the start of the next 4:38:20PM**
23 **season, if their part-time employment ended and**
24 **they were not selected to work during that next**
25 **season, would the discontinuation of their**
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1 **CYNTHIA DISTEFANO**
2 **were ultimately determined to have not, in fact,**
3 **satisfied all of the requirements for the**
4 **officer positions?**
5 A No. 4:39:54PM
6 MR. NOVIKOFF: Objection to form. 4:39:55PM
7 BY MR. GRAFF: 4:39:57PM
8 **Q So as far as you know, every CS-150 4:39:58PM**
9 **that Allison Sanchez approved for a police**
10 **officer at Ocean Beach was approved in**
11 **accordance with Civil Service requirements?**
12 A Yes. 4:40:10PM
13 **Q Other than Mr. Fiorillo, do you know 4:40:16PM**
14 **who the other plaintiffs in this case are?**
15 A I've seen the names. Whether I could 4:40:23PM
16 recite the other four. Carollo, I think was
17 one, Snyder, Nofi.
18 **Q Snyder and Nofi were, Carollo was not. 4:40:33PM**
19 **(Continued on the next page to include 4:40:37PM**
20 **jurat.)**
21
22
23
24
25
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1 CYNTHIA DISTEFANO
2 MR. GRAFF: But I'm concluded. Thank 4:40:38PM
3 you.
4 MS. ZWILLING: I have nothing. 4:40:39PM
5 (Time noted 4:40 p.m.) 4:40:40PM
6 4:40:40PM
7 CYNTHIA DISTEFANO 4:40:40PM
8 4:40:40PM
9 Subscribed and sworn to before me 4:40:40PM
10 this day of , 2009 4:40:40PM
11 4:40:40PM
12 4:40:40PM
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1 PROCEEDINGS
2 C E R T I F I C A T E
3
4 I, JUDI JOHNSON, RPR, CRR, CLR, a Notary Public in
5 and for the State of New York, do hereby certify:
6 THAT the witness whose testimony is hereinbefore
7 set forth, was duly sworn by me; and
8 THAT the within transcript is a true record
9 of the testimony given by said witness. I further
10 certify that I am not related, either by blood or
11 marriage, to any of the parties to this action; and
12 THAT I am in no way interested in the outcome of
13 this matter.
14 IN WITNESS WHEREOF, I have hereunto set
15 my hand this 17th day of June, 2009.
16
17
18 JUDI JOHNSON, RPR, CRR, CLR
19
20
21
22
23
24
25
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ERRATA SHEET

NAME OF CASE: CARTER V. OCEAN BEACH

DATE OF DEPOSITION: JUNE 5, 2009

NAME OF WITNESS: CYNTHIA DISTEFANO

Reason codes:

1. To clarify the record.

2. To conform to the facts

3. To correct the transcription

errors.

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

From _____ to _____

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CYNTHIA DISTEFANO

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